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NO.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

CITY OF NORTH OLMSTED, OHIO
PETITIONER,

vs.

GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY
RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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ATTORNEYS FOR PETITIONER
COUNSELS OF RECORD

MARCH, 1983

QUESTION PRESENTED

Whether the Sixth Circuit Court of Appeals affirmance of the District Court's grant of Summary Judgment to the Greater Cleveland Regional Transit Authority (GCRTA), a political subdivision of the State of Ohio, on Petitioner, City of North Olmsted, Ohio's claim that GCRTA was engaged in anti-competitive conduct in violation of the Sherman Antitrust Act, based upon the "State action" exemption was consistent with this Court's decision in Community Communications Co. v. Boulder 70 L.Ed. 2d 810 (1982) in light of the relevant statutes and constitutional provisions of the State of Ohio

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I. The decision below is in conflict with the applicable decisions of this Court regarding the requirements of a "state action" exemption from antitrust liability as expressed most recently in Community Communications v. City of Boulder 70 L.Ed. 2d 810.

II. The decision below presents an important federal question of antitrust liability between local and regional governmental bodies which is of nationwide importance and public concern.

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GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY,

RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The Petitioner, City of North Olmsted, Ohio, respectfully prays that the Honorable Supreme Court of the United States issue a Writ of Certiorari to review the Judgment and Opinion of the United States Court of Appeals for the Sixth Circuit entered on December 2, 1983.

Opinions Below

Sixth Circuit, Court of Appeals: The opinion of the court below in this case (Appendix A, infra, page 1) is reported at 722 F. 2d 1284.

District Court, Northern District of Ohio, Eastern Division: The opinion of the District Court in this case (Appendix A, infra, page 14) is unreported.

In a related matter, G.C.R.T.A. v. City of Maple Heights & City of North Olmsted, pursued through the Courts of the State of Ohio, the following opinions have been rendered:

Ohio Supreme Court: The dismissal of the Ohio Supreme Court, in the above case (Appendix A, infra, page 21) is unreported.

Cuyahoga County Court of Appeals, Eighth District: The opinion of the Ohio Court of Appeals in the above case (Appendix A, infra, page 23) is unreported.

Cuyahoga County Court of Common Pleas: The opinion of the Ohio Court of Common Pleas, in the above case (Appendix A, infra, page 35) is unreported.

Jurisdiction

The judgment of the Sixth Circuit Court of Appeals (Appendix A, infra, page 1) was entered on December 2, 1982. The jurisdiction of the United States Supreme Court is invoked pursuant to 28 United States Code Section 1254(1).

Constitutional and Statutory Provisions Involved

1. 28 United States Code Section 1254(1). (Appendix B, infra, page 1).
2. Section 2 of the Sherman Anti-Trust Act, 15 United States Code Section 2. (Appendix B, infra, page 1).
3. Article XVIII, Section 4 of the Ohio Constitution (Appendix B, infra, page 2).

4. Sections 306.30 et seq. of the Ohio Revised Code (Appendix B, infra, page 3).

5. Section 306.70 and 306.71 of the Ohio Revised Code (Appendix B, infra, page 30).

Statement of the Case

This case involves a claim by the City of North Olmsted, Ohio, the owner and operator of the North Olmsted Municipal Bus Line (NOMBL), that, during the period from 1977 to the present, the Greater Cleveland Regional Transit Authority (GCRTA) also the owner and operator of a bus line, attempted to monopolize the bus transportation market in Cuyahoga County, Ohio, and otherwise engaged in anti-competitive conduct in violation of Section 2 of the Sherman Antitrust Act (Appendix B, p.1), 15 U.S.C. Section 2. In the District Court below, as subsequently affirmed by the Sixth Circuit, Summary Judgment was granted to GCRTA on North Olmsted's antitrust claim based upon the affirmative defense of the "state action" exemption from federal antitrust law liability. It is from the misapplication of this Court's decisions in the area of the "state action" exemption and the existence of a conflict among the Circuits in this area that this

Petition is brought before the Court.

The factual background of this case is clear and for the most part uncontested by the parties. The Petitioner, City of North Olmsted, Ohio, an Ohio municipality located west of Cleveland, in Cuyahoga County, has owned and operated the NOMBL since 1931 providing bus service within the City and surrounding cities and townships. Petitioner's authority to own and operate such a service is expressly granted in Article XVIII, Section 4 of the Ohio Constitution which was enacted as a "home rule" amendment in 1912. (Appendix B, p.2).

In 1974, the Ohio General Assembly provided a mechanism for the voluntary creation of new State political subdivisions through joint legislative action of counties, municipalities or townships for the purpose of the operation and funding of regional transit authorities pursuant to Ohio Revised Code Section 306.30 et seq. and 306.70 and .71. Among the powers granted to such

regional transit authorities was the power to own and operate bus lines within the territorial boundaries of the counties, municipalities or townships which created the transit authority or which voluntarily joined therein.

On December 30, 1974, the City of Cleveland, Ohio, and Cuyahoga County, Ohio, created by joint legislative action, the Greater Cleveland Regional Transit Authority. This action, engaged in by Cuyahoga County and only one of the more than fifty cities, villages and townships in the county, led to the operation of a bus line throughout the countywide region. Thereafter, in 1975 GCRTA entered into operating agreements with all other existing public and private bus lines providing for coordinated service in exchange for subsidization of the existing line by GCRTA through the passage of a tax levy.

The City of North Olmsted entered into an operating agreement with GCRTA on October 5, 1975, for an initial two year term. The

agreement was subsequently renewed for shorter terms at GCRTA's insistence and finally expired March 5, 1980, when, as alleged in the courts below, GCRTA refused to renew in an effort to force North Olmsted into selling its bus line to GCRTA, knowing that the City's bus line could not continue to compete without subsidization from GCRTA's funding sources.

In an attempt to determine the propriety of GCRTA's refusal to renew, the City of North Olmsted, the City of Maple Heights which was similarly affected and GCRTA brought actions for declaratory relief in the Cuyahoga County Court of Common Pleas. The parties sought a declaration of whether, under the Ohio Constitution and relevant state statutes, GCRTA was required to renew its operating agreements with the other bus lines and if not whether GCRTA was empowered to operate competing lines within the boundaries of political subdivisions that neither created or voluntarily joined in the regional authority. (See, Greater Cleveland Regional Transit

Authority v. City of Maple Heights and City of North Olmsted (1980) Consolidated Case Nos. 999314, 999315 and 999358; (Appendix A, infra, page 31). The Court of Common Pleas held that under State law, GCRTA was not obligated to renew and was not prohibited from operating parallel and competing systems. (Id.

The decision was subsequently affirmed by the Cuyahoga County Court of Appeals in Greater Cleveland Regional Transit Authority v. City of Maple Heights, et al. (1981) Consolidated case nos. 42982, 43117 and 43419. (Appendix A, infra, page 20). Leave to further appeal to the Ohio Supreme Court was denied in Greater Cleveland Regional Transit Authority v. City of Maple Heights, et al. case no. 81-1087 (1981). (Appendix A, infra, page 18).

The present action was then commenced by Petitioner, City of North Olmsted, Ohio, in the United States District Court for the Northern District of Ohio on October 16, 1981, when a Complaint was filed asking for Injunctive and Other Relief against GCRTA. The

District Court's original jurisdiction to hear cases alleging violations of the Sherman Antitrust Act, 15 USC, was properly invoked by Petitioner.

Petitioner alleged that GCRTA had, from 1977 to the present violated Section 2 of the Sherman Antitrust Act (Appendix B, infra, page 1) by attempting to monopolize the bus transportation market of Cuyahoga County, Ohio. It was further alleged that GCRTA had engaged in various acts of anti-competitive conduct including, inter alia, negotiating the renewal of operating agreements with local bus operators in bad faith, systematically absorbing the operations of small local lines, and refusing to share with local operators state and federal grants and tax revenues which effectively prevented them from continuing their operations. Petitioner also alleged that GCRTA's monopolistic practices were in direct violation of Article XVIII, Section 4 of the Ohio Constitution which expressly grants Ohio municipalities the right to operate public

utilities, such as bus lines. (Appendix B, infra, page 2).

In its prayer for relief, Petitioner asked that GCRTA be restrained from operating a federal or state subsidized bus line within the bounds of its City and that GCRTA be ordered to negotiate with Petitioner, in good faith, for the renewal of the prior operating agreement which would protect the Petitioner's right to operate a local bus line.

In answer, GCRTA filed a Motion for Judgment on the Pleadings or, in the alternative, for Summary Judgment. GCRTA's Motion was based on the affirmative defenses of res judicata and collateral estoppel as to Petitioner's Ohio Constitution claim and the defense of the Parker "state action" exemption from federal antitrust liability as to Petitioner's Sherman Antitrust Act claims. The District Court granted GCRTA's Motion for Summary Judgment on the basis of the affirmative defenses raised therein. (See, City of North Olmsted v. Greater Cleveland

Regional Transit Authority 722 F. 2d 1284 (1983)). (Appendix A, infra, page 1).

Petitioner, City of North Olmsted, Ohio, now petitions this Court to issue a writ of certiorari to the Sixth Circuit Court of Appeals for a review of this significant federal question.

Argument for Granting a Writ of Certiorari

1. THE DECISION BELOW IS IN CONFLICT WITH THE APPLICABLE DECISIONS OF THIS COURT REGARDING THE REQUIREMENTS OF A "STATE ACTION" EXEMPTION FROM ANTITRUST LIABILITY AS EXPRESSED MOST RECENTLY IN COMMUNITY COMMUNICATIONS v. CITY OF BOULDER 70 L.ED. 2d 810 (1982).

Petitioner, City of North Olmsted, Ohio, requests that this Court issue a writ of certiorari to the Sixth Circuit Court of Appeals to determine if that Court, as well as others, has correctly applied the test articulated by this Court in Community Communications v. City of Boulder 70 L.Ed. 2d 810 (1982) in regard to the "state action" exemption from antitrust liability. The misapplication of the Community Communications test has not only seriously prejudiced Petitioner, but has also

seriously undermined the standard which this Court has established in its evolution of the "state action" doctrine, following its inception in Parker v. Brown 317 U.S. 341 (1943).

The lower courts, in this case, have entered Summary Judgment in favor of Respondent, Greater Cleveland Regional Transit Authority, a political subdivision of the State of Ohio, against Petitioner on its Sherman Antitrust Act claims. The actions of the lower courts were based on their view that Respondent was entitled to exemption because its conduct was the result of state action as defined in Community Communications. This view clearly and improperly broadens the "state action" exemption doctrine beyond the limits established in this Court's past decisions, as applied to the relevant facts in the present case.

A crucial aspect of the present case is that both Petitioner and Respondent are political subdivisions of the State of Ohio and each is granted certain rights which are not in conflict inter se. In such an instance,

the intent of the State to create a setting wherein one subdivision might exercise monopoly power over the other, should be clearly evident before a federal court finds an exemption from antitrust liability because of the "state action" doctrine.

The "state action" exemption doctrine originated in Parker v. Brown 317 U.S. 341 (1943) where the State of California's enactment of the Agricultural Prorate Act was alleged to be violative of the Sherman Antitrust Act by preventing raisin growers from freely marketing their goods. It was held, in that case, that Congress had not preempted the regulation of that particular field and, further, that there was no evidence that Congress had intended to restrain the States from engaging in anti-competitive conduct. Accordingly, the Court held that anti-competitive conduct engaged in or directed by the State, as a sovereign act of government, was exempt from federal antitrust law liability. Id. at 350.51. While Parker is still good law

the broad holding has been narrowed and modified over the succeeding years.

The current state of the Parker exemption is the result of this Court's recent decisions in City of LaFayette v. Louisiana Power and Light 435 U.S. 389 (1978) and Community Communications v. City of Boulder 70 L.Ed. 2d 810 (1982). These decisions, like the present case, involved claims of exemption by political subdivisions of the States. The plurality opinion of LaFayette held that Congress did not intend to exempt political subdivisions from Sherman Act liability simply by their status as such and that "the Parker doctrine exempts only anti-competitive conduct engaged in as an act of government by...(these) subdivision, (which is) pursuant to state policy to displace competition with regulation or monopoly public service." City of LaFayette at 411-13. This Court's opinion in Community Communications noted that the LaFayette opinion had been accepted by a majority of the Court in subsequent decisions. (See, New Motor Vehicle

Board of Calif. v. Orrin W. Fox Co. 439 U.S. 96 (1978); Calif. Retail Liquor Dealers Assoc. v. Midcal Aluminum Co. 445 U.S. 97 (1980)). The Court, in Community Communications, adopted a two step test, first articulated in LaFayette, for determining whether a State political subdivision was entitled to the Parker "state action" exemption from antitrust liability.

Community Communications and LaFayette held that political subdivisions could not claim an antitrust Parker exemption unless it could show that the charged conduct engaged in was "pursuant to state policy to displace competition with regulation or monopoly public service". LaFayette at 413. In addition, the political subdivision must show that the "state policy" relied upon was "clearly articulated and affirmatively expressed" by the State Legislature. Id at 413, Community Communications at 815. The meaning of this two-part test, concisely stated is "that when the State itself has not directed or authorized an anti-competitive practice, the State's subdivisions

in exercising their delegated power must obey the antitrust laws". LaFayette at 416.

The above standard was purportedly followed in the decisions below in this case in favor of Respondent. It is Petitioner's request that this Court examine the decision of the Sixth Circuit Court of Appeals to determine if it, in fact, is a faithful adherance to the Community Communications test. The lower courts were faced with the task of determining the intent of the Ohio Legislature in enacting Ohio Revised Code Section 306.30 et seq. and 306.70 and .71 and whether the Legislature intended to create a monopoly in the bus service field in the State of Ohio. In such a case, "the district judge's inquiry on this point should be broad enough to include all evidence which might show the scope of the legislative intent". City of LaFayette v. Louisiana Power and Light (5th Cir. Ct. of Appl. 1976) 532 F. 2d 434, 435. Petitioner contends that the lower courts failed to examine all of the relevant evidence and, instead, applied a less

stringent test completely unwarranted by this Court's decisions.

The lower courts had before them two authorative statements of the "state policy" of Ohio. The first was Article XVIII, Section 4 of the Ohio Constitution, the Home Rule amendment, which expressly grants to Ohio municipalities the right to operate public utilities within their own territorial boundaries and surrounding areas. A bus line is a public utility within the meaning of Article XVIII, Section 4. (See, Cleveland Railway Co. v. Village of North Olmsted 130 Ohio St. 144, 198 N.E. 41 (1935)). Further, it is well established, under Ohio case law, that in enacting legislation regulating public utilities, the Legislature may not interfere with the constitutionally protected right of Ohio municipalities to own and operate utilities of their own. (See, Columbus v. Public Utility Commission 58 Ohio St. 2d 427, 390 N.E. 2d 1201 (1974); Columbus v. Teater 53 Ohio St. 2d 253, 374 N.E. 2d 154 (1978) and

Canton v. Whitman 44 Ohio St. 2d 62, 337 N.E. 2d 766 (1975)). Moreover, in a case dealing with an attempt to regionalize water utility service, also a public utility, a recent Ohio Court decision held that since the Ohio Constitution granted municipalities the right to operate and own public utilities, the State Legislature could not, and would not be presumed to have, enacted a legislative scheme for the creation of regional utilities empowered to deprive municipalities of their Constitutional right to run their own utilities. Seven Hills, et al. v. Cleveland 1 Ohio App. 3d 84, 493 N.E. 2d 895 (Ct. App. 1980).

The other evidence of Ohio's "state policy" was the content and language of Ohio Revised Code Section 306.30 et seq. and 306.70 and .71. These Sections allow for the formation of regional transit authorities through joint legislative action (O.R.C. Section 306.32, Appendix B. infra, page 5); through voluntary inclusion (O.R.C. Section 306.321, Appendix B, infra, page 8); or through voluntary

modification and even dissolution (O.R.C. Section 306.54, Appendix B, infra, page 35). Moreover, the Legislature provided that such an authority was empowered to enter into and supervise franchise agreements for the operation of bus service (O.R.C. Section 306.35(O), Appendix B., infra, page 30). The Legislature also contemplated that such an authority would provide by agreement with, among others, municipalities fro the "acquisition, maintenance and operation of transit facilities" (O.R.C. Section 306.35(M), Appendix B, infra, page 30). Further, the Legislature denied these authorities any right to exercise the power of eminent domain to acquire any transit franchises belonging to a municipal corporation without that municipality's consent.

The District Court, after citing the relevant case law authority, purported to apply the "state action" exemption test as stated in LaFayette, supra. The District Court's decision failed to apply that test correctly. The Court held that:

> When the statutes are examined in detail it is equally clear that the Ohio legislature was not ignorant of the possibility that a municipally owned transit system would either fail or be absorbed upon the formation of a regional transit authority within the county in which that municipality was located. Accordingly, this court holds that the GCRTA, by engaging in the conduct which is the subject of North Olmsted's complaint, is acting under authority granted it by the Ohio legislature and that the legislature contemplated the kind of conduct of which North Olmsted complains". (Emphasis added.)

(See, Memorandum of Opinion, Appendix A, infra, at page 13).

The Court of Appeals for the Sixth Circuit applied the test similarly, holding that:

> "...the actions of GCRTA alleged in North Olmsted's complaint were contemplated and authorized by state law and constituted state or state subdivision action in furtherance of 'affirmatively expressed state policy.' ...The alleged anti-competitive conduct of GCRTA was engaged in pursuant to a clearly articulated state policy expressed by legislative action creating regional or countywide, transportation authorities."

(See, Sixth Circuit opinion, Appendix A, infra at page 5).

Though both lower courts claim to be applying the LaFayette/Community Communications test, in fact they both are using a standard

expressly rejected in those cases. It is clear from the relevant Ohio statutes that the State is neutral as regards the formation and operation of regional transit authorities. Formation is voluntary as is dissolution. The operation may be carried out by a central authority, by franchise, or by operating agreements with local municipalities. The statutes hardly envision a "state policy" to replace competition with monopoly and even more clearly, there is no affirmative expression of that policy. The State of Ohio is merely neutral in this matter, it allows regional authorities across the state significant independence in determining their own mode of operation. The lower court's decision holds that this independence shows an intent by the state to allow anti-competitive conduct and, therefore, anti-trust exemption is warranted. Such a holding flies in the face of this court's reasoning in Community Communications. There this Court expressly denied such analysis and stated:

> "Thus on respondent's view, Boulder can pursue its course of regulating cable television competition, while another home rule city can choose to prescribe monopoly service, while still another can elect free market competition and all of these policies are equally 'contemplated', and 'comprehended within the powers granted'. Acceptance of such a proposition -- that the general grant of power to enact ordinances necessarily implies state authorization to enact specific anti-competitive ordinances -- would wholly evisicerate the concepts of 'clear articulation and affirmative expression' that our precedents require."

Community Communications, supra at 817

The lower court's decisions holding that enactments of the Ohio Legislature, neutral and consensual on their face, especially so when viewed in light of the relevant Ohio Constitutional provisions, are a sufficient basis for a finding of a "state action" exemption, clearly conflict with this Court's decisions in this area. To allow such a decision to stand as precedent in the jurisdiction of the Sixth Circuit would throw into confusion once again the whole area of the "state action" exemption which this Court attempted to finally clarify in Community

Communications. The present case contains clear and simple facts as well as general and neutral state statutes. The issue in the case is uncluttered by collateral matters and is ripe for this Court's review.

II. THE DECISION BELOW PRESENTS AN IMPORTANT FEDERAL QUESTION OF ANTITRUST LIABILITY BETWEEN LOCAL AND REGIONAL GOVERNMENTAL BODIES WHICH IS OF NATIONAL IMPORTANCE AND PUBLIC CONCERN.

Clearly, the question presented is of importance to all states in their attempt to provide comprehensive service to their citizens without unduly infringing on the rights of local political subdivisions to supply those services themselves pursuant to "Home Rule" powers. The Court, interpreting Congressional enactments, has held that a State is immune from antitrust liability if it affirmatively expresses a clear policy to offer monopoly services to the public. The question in this case is whether the State, simply by providing a mechanism for the voluntary formation of regional authorities, can implicitly allow thes authorities unlimited

power to engage in anti-competitive conduct, unchecked by State constitutional provision or federal antitrust law.

If this Court allows such a precedent to exist, the impact on local governmental independence could be highly damaging. The growth of local power in Ohio, as in many other states, was the result of historical inefficiency, corruption or unresponsiveness from the state legislature. In order to combat these problems and to better serve local citizenry, the Ohio Constitution was amended to grant municipalities the right to self-legislate matters of local concern. In the realm of local concern were matters such as transit service, water and sewer service, utility supplies and recreational and cultural matters. In Ohio, as elsewhere, these matters are just the ones which are now being combined in regional authorities such as that at issue in the present case.

The decision in the lower courts would in Justice Rhenquist's words in his dissent in

Community Communication, supra at 820, "destroy the home rule movement in this country through which local governments have obtained, not without persistent state opporition, a limited autonomy over matters of local concern". The interest of the various States in limiting local power is evidenced, as noted by Justice Rhenquist, Id., by the fact that 22 States joined as amicus curiae in Community Communications, supra. It is crucial that this Court clearly affirm its prior decisions by reversing the lower courts' holding which establishes a "state action" exemption from antitrust liability where the state has simply permitted the voluntary formation of a regional authority. Allowing the lower courts' decision to stand in this case will permit States to circumvent the Home Rule powers of municipalities by the simple expedient of enacting regional authority legislation, even where it directly conflicts with State constitutional provision and the intent of the framers of the federal antitrust laws.

Conclusion

Petitioner requests that this Court issue a writ of certiorari to the Sixth Circuit Court of Appeals to review its decision in this case. This Court has clearly stated the standard by which to judge the propriety of granting a political subdivision of a State, a Parker, "state action" exemption from antitrust liability. The standard, articulated in LaFayette and Community Communications, supra, requires a showing of a state policy to replace competition with monopoly, which policy must be clearly articulated and affirmatively expressed. Moreover, the activities of an anti-competitive nature must have been contemplated by the State. Although the lower courts cited the above standard, in fact they were not applied. The lower court adopted a standard which provides for an exemption simply by the

enactment of general, neutral legislation which on its face neither permits nor contemplates the charged anti-competitive conduct. Such a standard conflicts with the controlling precedent of this Court and presents important federal questions of national importance. For the foregoing reasons, Petitioner respectfully urges this Court to grant its Petition for a writ of certiorari.

Respectfully submitted,

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Certificate of Service

Three copies of the foregoing Petition for a writ of certiorari have been sent via U.S. mail, pursuant to Rule 28 of the Supreme Court Rules, to:

Malcolm C. Douglas
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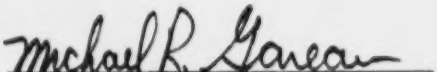
Special Counsel for Respondent

this 1st day of March, 1984



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APPENDIX A: OPINIONS BELOW

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CITY OF NORTH OLMSTED, OHIO,
Plaintiff-Appellant,

v.

GREATER CLEVELAND REGIONAL
TRANSIT AUTHORITY,
Defendant-Appellee.

No. 82-3135

United States Court of Appeals,
Sixth Circuit.

Argued March 29, 1983.

Decided Dec. 2, 1983.

City brought action against another city's transit authority, alleging anti-trust violations. The United States District Court for the Northern District of Ohio, John M. Manos, J., entered summary judgment in favor of transit authority, and city appealed. The Court of Appeals, Wellford, Circuit Judge, held that actions of city transit authority in absorbing municipal bus lines in county and allegedly obtaining a complete monopoly of bus service were contemplated and authorized by state

law which created the authority, and constituted state or state subdivision action in furtherance of affirmatively expressed state policies; therefore, the state action exemption to Sherman Act was correctly found to apply to the authority's alleged action.

Affirmed.

1. Monopolies - 12(15.5)

Actions of city transit authority in absorbing municipal bus lines in county and allegedly obtaining a complete monopoly of bus service were contemplated and authorized by state law which created the authority, and constituted state or state subdivision action in furtherance of affirmatively expressed state policies; therefore, the state action exemption to Sherman Act was correctly found to apply to the authority's alleged action. Sherman Anti-Trust Act, Section 1 et seq., 15 U.S.C.A. Section 1 et seq.

2. Monopolies - 12(15.5)

Alleged failure by city transit authority to share with another city or allocate Urban Mass Transportation Act funds to it was not actiorable under the Sherman Act, because neither federal or state law required equal distribution of potential benefits in the form of inventory subsidies. Sherman Anti-Trust Act, Section 1 et seq., 15 U.S.C.A. Section 1 et seq.; Ohio Const. Art. 18, Section 4.

3. Judgment - 828(3.16)

In action brought against city transit authority for alleged violations of anti-trust statutes and State Constitution, a prior opinion of state court on the state constitutional issue had res adjudicata effect, because state court's judgment that municipalities had no exclusive right to conduct transit services within or without their corporate boundaries was a final

adjudication on the claim, and state court's rationale was determinative and settled finally all claims raised by plaintiff in the federal suit.

Michael R. Gareau, James M. Dubelko, argued, North Olmsted, Ohio, for plaintiff-appellant.

Malcolm C. Douglas, argued, Edward J. Opett, Cleveland, Ohio, for defendant-appellee.

Before MERRITT, KENNEDY and WELLFORD, Circuit Judges.

WELLFORD, Circuit Judge.

This is an appeal from the grant of a summary judgment by the trial judge in this case in which the appellant, City of North Olmsted, Ohio, has sued the Greater Cleveland Regional Transit Authority (GCRTA), appellee, for alleged violations of the Sherman Anti-trust Act and the Ohio Constitution in attempting to monopolize public trans-

portation in Cuyahoga County, Ohio. North Olmsted sought an injunction to prevent GCRTA from furnishing bus transportation inside its corporate limits, and requesting that GCRTA be directed to effectuate an agreement which would apportion to it a part of GCRTA's transportation subsidies. Appellee is charged with violating Section 2 of the Sherman Antitrust Act, 15 U.S.C. Section 2, which provides:

> Every person who shall monopolize, or attempt to monopolize...any part of the trade or commerce among the several States...shall be deemed guilty...(of unlawful conduct).

The Ohio constitutional provision relied upon by appellant is Article 18, Section 4 (the Home Rule Amendment), Ohio Const. art. 18 Section 4, which provides:

> Any municipality may acquire, construct, own, lease, and operate within

> or without its corporate limits, any public utility the product or service of which is or is to be supplied to the municipality or its inhabitants, and may contract with others for any such product or service...

The district court properly found jurisdiction in this case. To understand the controversy, it is necessary to recite some background, most of which is uncontested.

North Olmsted is an Ohio municipality that has owned and operated a city bus line since 1931 within its territorial boundaries as provided for in the so-called home Rule Amendment to the Ohio Constitution (Article 18, Section 4). In 1974, the Ohio Code was amended to provide for the creation, funding and operation of regional transit authorities as political subdivisions of

the state. In 1974, under that statutory authority GCRTA was created by the City of Cleveland, and Cuyahoga County, and began operating a bus line in Cuyahoga County, Ohio, composed of bus line assets transferred to GCRTA from the cities of Cleveland and Shaker Heights, Ohio. In 1975, North Olmsted and GCRTA entered into "operating agreements" whereby appellant agreed to provide municipal transit operations and GCRTA agreed to assist by financial subsidy appellant's transit operations. Several extensions of the agreement were entered into which remained in effect until March 5, 1980. After negotiations, the parties could not reach agreement after that time about renewal of the contractual relationships, or about GCRTA's eventual acquisition of appellant's transit system.

Appellant first filed a declaratory judgment action against GCRTA in Ohio court

under a variety of state law theories. The Ohio court found that the evidence did not show that GCRTA had threatened or attempted to coerce appellant; that GCRTA was under no duty, statutory or otherwise, to continue its relationship with North Olmsted; and that municipal corporations such as North Olmsted were not granted freedom from competition under the laws or constitution of Ohio. This trial court decision to deny North Olmsted any relief was affirmed by the Cuyahoga County Court of Appeals. North Olmsted's subsequent appeal to the Ohio Supreme Court was dismissed.

After the failure to obtain any relief in Ohio courts, appellant filed this suit in federal district court, alleging that, among other things, in 1977, GCRTA implemented a plan to achieve a monopoly in bus transportation in Cuyahoga County in violation of Section 2 of the Sherman Antitrust Act.

The district court granted summary judgment for GCRTA on this claim, holding that the activities of GCRTA were exempt from the scope of the federal antitrust laws under the "state action" doctrine. The rationale for this holding was that GCRTA was created for the express purpose of providing unified and dependable public transportation service within Cuyahoga County, and this enactment demonstrated that "the Ohio legislature was not ignorant of the possibility that a municipally owned transit system would either fail or be absorbed upon the formation of a regional transit authority..." The trial court found that GCRTA was acting under the authority of the Ohio legislature and that the legislature contemplated the conduct about which North Olmsted complained. Accordingly, GCRTA fell within the "state action" exemption to antitrust liability in respect to its challenged actions in this case.

When GCRTA was created, the cities of Shaker Heights, Euclid and Maple Heights, in addition to Cleveland and North Olmsted, owned and operated municipal transit systems. Cleveland and Shaker Heights in 1975 transferred their transit systems to GCRTA on the condition that Cuyahoga County voters approve a 1% sales tax levy for regional transit purposes. That condition was carried out by the Cuyahoga County voters, included among whom were those in North Olmsted. The "operating agreement" reached not long thereafter between the parties to this litigation provided that North Olmsted would provide municipal transit services inside its boundaries, and GCRTA would provide a full financial subsidy for these operations from the sales tax levy. That agreement also contained a proviso that it was "contemplated by the parties that (GCRTA) may eventually assume operation,

ownership and control of (North Olmsted's) scheduled bus service." Euclid, Ohio, which had a similar such agreement, transferred its bus transit system to GCRTA in 1979.

The operating agreement was to expire in 1980, but during negotiations regarding a further extension, appellant filed its unsuccessful suit against GCRTA in state court.

The state court found in the declaratory judgment proceding that GCRTA had "fulfilled all of its contractual obligations under said operating agreement(s) to... North Olmsted," and that GCRTA had not threatened appellant with termination of the operating agreement "in order to wrongfully coerce (it) to enter into an agreement to transfer (its) municipally owned transit system(s)" to GCRTA. As a consequence of these, and other findings, the Ohio trial judge concluded that GCRTA had the duty to provide county-wide transportation service; that GCRTA, due

to the expiration of the operating agreement had "no continuing obligations" thereunder; that GCRTA had no duty to continue its relationship with appellant and that neither the Ohio laws nor constitution precluded GCRTA from "operating parallel transit service lines" through North Olmsted.

The judgment of the Court of Common Pleas was affirmed by the Ohio Court of Appeals,[2] which held that "(w)here a county creates a regional transit authority for the entire county the jurisdiction of said authority is the entire county." (emphasis added). The Court of Appelas further held that under Section 306.35(G)[3] of the Revised

[2]Greater Cleveland Regional Transit Authority v. City of Maple Heights, No. 43419 (Ohio Ct. App. filed May 14, 1981).

[3]A regional transit authority:
"May acquire, construct, improve, extend, repair, lease, operate, maintain, or manage transit facilities within or without its territorial boundaries, considered necessary to accomplish the

Code of Ohio, "the authority is authorized to operate transit facilities within" the municipality of North Olmsted and others within Cuyahoga County.

"In its proceeding in the federal court, North Olmsted charged that GCRTA had "periodically engaged in sham negotiations" with respect to the proposed renewal of the operating agreements" with intent of forcing Plaintiff, and those other operators, to either sell their bus lines to the GCRTA," or to force North Olmsted and others out of business. The complaint recited GCRTA's absorption of other municipal bus lines in Cuyahoga County, and that GCRTA was engaging in these activities to obtain "a complete monopoly of bus service." North Olmsted also complained that GCRTA had purchased

[3]purposes of its organization and make charges for the use of transit facilities." Ohio Revised Code Ann. Section 306.35(G) (Page Supp. 1982).

new buses for its operations, "but has refused to aid, assist, or provide Plaintiff with any of these new buses..." Further, it was charged that GCRTA's subsidies from the tax levy enabled it to exploit its position at North Olmsted's expense so that it could offer lower "anticompetitive fare rates."

GCRTA claims exemption from the claimed antitrust statutory violations under the rationale of Parker v. Brown, 317 U.S. 341, 63 S. Ct. 307, 87 L.Ed. 315 (1943) and the line of cases that set out a "state action" doctrine, which precludes enforcement of the Sherman Act to "official action directed by a state." Parker at 351, 63 S.Ct. at 313. It was specifically held in Parker:

> We find nothing in the language of the Sherman Act or in its history which suggests that its purpose was to restrain a state or its officers oe agents from activities directed by its legislature.

317 U.S. at 350-51, 63 S.Ct. at 313.

This doctrine enunciated in Parker was held to exempt "anti-competitive conduct engaged in as an act of government by the state as sovereign, or, by its subdivisions, pursuant to state policy to displace competition with regulation or monopoly public service..." from Sherman Act control. City of Lafayette v. Louisiana Power & Light Co., 435 U.S. 389,413,98 S.Ct. 1123, 1136, 55 L.Ed.2d 364 (1978) (emphasis added).

The Lafayette case involved the actions of a city, a political subdivision of the State of Louisiana, which were challenged by a private utility company as anti-competitive under the Sherman Act. The court plurality rejected the claim made by Lafayette of state action exemption, but stated, nonetheless:

> This does not mean, however, that a political subdivision necessarily must

be able to point to a specific, detailed legislative authorization before it properly may assert a Parker defense to an antitrust suit. While a subordinate governmental unit's claim to Parker immunity is not as readily established as the same claim by a state government sued as such, we agree with the Court of Appeals that an adequate state mandate for anticompetitive activities of cities and other subordinate governmental units exists when it is found "from the authority given a governmental entity to operate in a particular area, that the legislature contemplated the kind of action complained of." 435 U.S. at 415, 98 S.Ct. at 1138 (footnote omitted).

(1) That decision was later characterized as emphasizing "that the State as sovereign might sanction anticompetitive

municipal activities and thereby immunize municipalities from antitrust liability." Community Communications Co. v. Boulder, 455 U.S. 40, 51, 102 S. Ct. 835, 840, 70 L.Ed 2d 810(1982). The court in Community Communications Co. elaborated on the effect of the Lafayette decisions:

> This was simply a recognition that a State may frequently choose to effect its policies through the instrumentality of its cities and towns. It was stressed, however, that the "state policy" relied upon would have to be "clearly articulated and affirmatively expressed." This standard has since been adopted by a majority of the Court.

455 U.S. at 51, 102 S.Ct. at 840 (quoting Lafayette, 435 U.S. at 410, 98 S.Ct. at 1135). Based on the authoritative interpretation of the Ohio Regional Transportation Act given by the Ohio courts, we

conclude that the actions of GCRTA alleged in North Olmsted's complaint were contemplated and authorized by state law and constituted state or state subdivision action in furtherance of "affirmatively expressed state policy." Community Communications Co., 455 U.S. at 52, 102 S.Ct. at 841. See City of Lafayette; and New Motor Vehicle Board of Calif. v. Orrin W. Fox Co., 439 U.S. 96, 109 99 S.Ct. 403, 411, 58 L.Ed. 2d 361 (1978). The alleged anti-competitive conduct of GCRTA was engaged in pursuant to a clearly articulated state policy expressed by legislative action creating regional, or county-wide, transportation authorities. The state action exemption, then, was correctly found to apply to GCRTA's alleged actions as a matter of law by the district court. Accordingly, North Olmsted is precluded from maintaining its antitrust cause of action. See also the decision of

this court in Hybud Equipment Co. v. City of Akron, 654 F.2d 1187, 1195 (6th Cir. 1981).

(2) The alleged failure by GCRTA to share with North Olmsted or to allocate Urban Mass Transportation Act funds to it is not in our view actionable under the Sherman Act. The decision of the Ohio court in the declaratory judgment suit filed by appellant clearly indicated that the Ohio policy in enacting the regional transit authority act did not require "equal distribution of potential benefits in the form of inventory subsidies." Although that decision related to a state sales tax levy, the reasoning is sound and applicable as well to the federal act. The federal act does not mandate such apportioning of subsidy funds in order to avoid the impact of the Sherman Act.[4]

[4]We would agree with the Ohio Appellate Court that "we find no federal statute or policy precluding competition be-

(3) We also affirm the judgment of Judge Manos on the Ohio constitutional claim because we agree that the North Olmsted action in that respect is barred by the principles of res adjudicata. "A judgment on the merits in a prior suit involving the same parties or their privies bars a second suit based on the same course of action." Lawlor v. National Screen Service Corp., 349 U.S. 322, 326, 75 S.Ct. 865, 867, 99 L.Ed. 1122 (1955).

The Ohio Appellate Court, in construing the applicable Ohio statutes and Article 18, Section 4 of the Ohio Constitution, specifically held that municipalities have no "exclusive right to conduct transit services within or without their corporate boundaries." This state court decision was a final adjudication on this Ohio pendant

[4] tween federally funded regional transit authorities and municipal transit lines."

claim of North Olmsted seeking the federal court's order of preclusion against GCRTA operations within its boundaries. (Actually, of course, any such bus transit activity of GCRTA in North Olmsted would enhance rather than restrict competition.) Similarly, the decision of the Ohio appellate court that "the jurisdiction of the authority is the entire county," is a final adjudication on a further state claim of appellant. Furthermore, the Ohio appellate court held in the action previously filed by North Olmsted that under that state's constitution and laws "local and municipal interests must yield to the larger concerns of the State of Ohio." That rationale is determinative and settles finally as a matter of res adjudicata the claims of appellant in this proceeding.

For the reasons indicated, we AFFIRM the judgment of the district court in all respects.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CITY OF NORTH OLMSTED, OHIO,	:	CASE NO. C81-2058
	:	Judge John M. Manos
Plaintiff,	:	
v.	:	
GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY,	:	MEMORANDUM OF OPINION
Defendant.	:	

On October 16, 1981 plaintiff, the City of North Olmsted, Ohio, filed the above-captioned case alleging that the defendant, the Greater Cleveland Regional Transit Authority, (hereinafter, GCRTA), violated Section 2 of the Sherman Antitrust Act, 15 U.S.C. Section 2[1] and Article 18, Section 4 of the Ohio Constitution[2] by

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[1] 15 U.S.C. Section 2 provides as follows:

> Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony,

attempting to monopolize public transportation within Cuyahoga County, Ohio. North Olmsted requests that the GCRTA be enjoined from operating competing and parallel bus lines in North Olmsted and that the GCRTA be directed to negotiate an operating agreement which would provide North Olmsted with a share of the GCRTA's transportation subsidies.

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1 and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

2 Article 18, Section 4 of the Ohio Constitution provides in pertinent part as follows:

> Any municipality may acquire, construct, own, lease, and operate within or without its corporate limits, any public utility the product or service of which is or is to be supplied to the municipality or its inhabitants, and may contract with others for any such product or service...

No damages are requested. Jurisdiction is invoked under 28 U.S.C. Section 1337(a)[3] and 15 U.S.C. Section 26.[4]

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3 28 U.S.C. Section 1337(a) provides as follows:

> The district courts shall have original jurisdiction of any civil action or proceeding arising under any trade and commerce against restraints and monopolies: Provided, however, That the district courts shall have original jurisdiction of any action brought under Section 20(11) of part I of the Interstate Commerce Act (49 U.S.C. 20(11)) or section 219 or part II of such Act (49 U.S.C. 319), only if the matter in controversy for each receipt or bill of lading exceeds $10,000, exclusive of interest and costs.

4 15 U.S.C. Section 26 provides as follows:

> Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, including sections 13, 14, 18, and 19 of this title, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon

On November 20, 1981 the GCRTA filed a motion for judgment on the pleadings or, in the alternative, summary judgment. Fed. R. Civ. P. 12(c) and 56. For the reasons which follow the GCRTA's motion for summary judgment is granted.

The City of North Olmsted is located in Cuyahoga County, Ohio. Since 1931 it has

[4] the execution of proper bond against damages for an injunction improfidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: Provided, That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit in equity for injunctive relief against any common carrier subject to the provisions of the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission. In any action under this section in which the plaintiff substantially prevails, the court shall award the cost of suit, including a reasonable attorney's fee, to such plaintiff.

owned and operated the North Olmsted Municipal Bus Line, (hereinafter, NOMBL). On December 30, 1974 the GCRTA was created by joint action of the City of Cleveland, Ohio, which owned and operated a municipal bus line and Cuyahoga County, which did not. See: OHIO REV. CODE ANN. Section 306.30 et. seq., (Page). At the time the GCRTA was created the Cities of Shaker Heights, Euclid and Maple Heights also owned and operated municipal transit systems. On May 21, 1975 Cleveland agreed to transfer its transit system to the GCRTA subject to the condition that the voters of Cuyahoga County approve a sales tax levy for regional transit purposes of not less than one percent (1%). On July 22, 1975 Shaker Heights agreed, subject to the same condition precedent, to transfer its transit system. On that same date the voters of Cuyahoga County approved the one percent (1%) sales tax levy.

On October 5, 1975 North Olmsted and the GCRTA reached an agreement entitled "Public Transportation Operating AGreement" whereby North Olmsted agreed to provide certain municipal transit services and the GCRTA agreed to provide a full financial subsidy of North Olmsted's transit operations. Unless extended by mutual consent of the parties, the agreement expired on October 5, 1977. The agreement also provided that it was "contemplated by the parties that the (GCRTA) may eventually assume operation, ownership and control of (North Olmsted's) scheduled bus service.[5] When the term of the agreement expired the parties negotiated several extensions which

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[5] On July 5, 1975 the GCRTA reached a similar agreement with the City of Euclid. Pursuant to that agreement the Euclid municipal transit system was transferred to the GCRTA on July 1, 1979.

remained in effect until March 5, 1980. At this time, although negotiations continued, the parties neither reached an agreement concerning renewal of their previous contractual relationship nor, concerning the GCRTA's eventual acquisition of North Olmsted's transit system. Accordingly, the parties' contract expired pursuant to the provisions contained therein.

On June 8, 1979, while negotiations between the parties continued, the GCRTA filed a declaratory judgment action against North Olmsted in the Cuyahoga County, Ohio Court of Common Pleas. The GCRTA sought a declaration of its rights, duties and obligations under the operating agreement and under OHIO REV. CODE ANN. Section 306.30 et. seq., (Page). On that same date North Olmsted filed a similar action against the GCRTA. In addition to outlining a procedural history of the parties' dispute similar

to that above, the Court of Common Pleas made the following findings of fact and conclusions of law:

FINDINGS OF FACT:

23. (The GCRTA) fulfilled all of its contractual obligations under (the) Operating Agreements to .... North Olmsted.

24. The evidence does not show that (the GCRTA) has repeatedly or wrongfully threatened ... North Olmsted with termination of the Operating Agreement relationship in order to wrongfully coerce (it) to enter into an agreement to transfer (its) municipally owned transit system to (the GCRTA).

25. The Operating Agreements between (the GCRTA) and ... North Olmsted have expired.

CONCLUSIONS OF LAW:

4. The Territorial jurisdiction of the (GCRTA) is county wide and such authority

has the statutory duty to provide transportation service to ridership throughout Cuyahoga County.

7. The payment by residents of... North Olmsted of a sales tax levied county wide for the purpose of the (GCRTA) does not require the equal distribution of potential benefits in the form of monetary subsidies in proportion to the burden of the tax levied.

8. The Public Transportation Operating Agreements between the (GCRTA) and... North Olmsted have expired by lapse of time and the (GCRTA) has no continuing obligations under the terms of said operating agreements.

10. The (GCRTA) is under no statutory duty to continue its relationship with... North Olmsted under the terms of the Operating Agreements, nor does such a duty arise on the theory of "estoppel" or

"vested interest."

11. Neither the Constitution nor the statutes of the State of Ohio prohibit the (GCRTA) from operating parallel transit service lines through ... North Olmsted.

13. Municipal corporations are not granted freedom from competition, nor exclusive territorial rights in the operation of their transit systems, either by the Ohio Constitution or the statutes of the State of Ohio.

14. The fact that the operation of parallel competitive service lines by the (GCRTA) would affect adversely the value of and the profitability of suburban transit systems does not, in and of itself, constitute an unlawful appropriation of property, nor an invasion of home rule powers of municipalities.

16. The suburban ridership must be afforded continuing transit service at its

present level of quality and frequency, and, therefore, the (GCRTA) is required to implement and to maintain such degree of county-wide service by any feasible method, whether it be by purchase of suburban lines, by entering into operating agreements with the suburbs or by operating parallel transit lines whenever necessary.

On May 14, 1981 this judgment was affirmed by the Cuyahoga County Court of Appeals. That court held:

> ...Article XVIII, Section 4 of the Ohio Constitution does not grant municipalities an exclusive right to conduct transit services within or without their corporate boundaries. Said Article is permissive in nature, permitting a municipality to create and operate any public utility for the benefit of its inhabitants. While it is correct that a state legislature

cannot limit or restrict such municipal power, in the instant cause, the authority is not seeking to do so and the declaration by the trial court does not attempt to do so.

* * *

Since Article XVIII, Section 4 of the Ohio Constitution permits municipalities to own and operate a bus line within its jurisdiction and Chapter 306 of the Revised Code authorizes a county-wide transit authority to operate transit facilities within its territorial boundaries, the possibility of competing bus lines exists in North Olmsted. . .

* * *

In the cause sub judice, Chapter 306 is a legislative enactment by the legislature of Ohio in an area

of statewide concern, public transportation. While such legislation does not conflict with the power of municipalities to own and operate their own transit systems, a municipality cannot override the powers of regional transit systems, authorized by state legislation to operate such systems throughout their jurisdictions, including municipalities which be within a county-wide transit authority.

We find no federal statute or policy precluding competition between federally funded regional transit authorities and municipal transit lines, as contended by.... North Olmsted...

Nor do we find any authority for the proposition..that the trial court erred in declaring that the Authority

is not obligated to cooperate with... North Olmsted...in providing county-wide mass transit services to (that city).

Thus, we conclude the determination of whether or not to enter into agreements with...North Olmsted...is within the sound discretion of the Greater Cleveland Regional Transit Authority.

Ct..App. Op. pp. 7-8, 10-11. On September 16, 1981 North Olmsted's appeal to the Supreme Court of Ohio was dismissed on the ground that it failed to raise a substantial constitutional question.

In counts one and two of its complaint North Olmsted alleges that in 1977, the GCRTA implemented a plan to achieve a monopoly in bus transportation in Cuyahoga County in violation of Section 2 of the Sherman Antitrust Act. In count one of its complaint North Olmsted claims that the GCRTA committed the following acts for the

sole purpose of furthering its alleged attempt to monopolize:

(a) Since 1977, Defendant GCRTA has periodically engaged in sham negotiations in proposed renewals of the operating agreements with other bus line operators in Cuyahoga County, with intent of forcing Plaintiff, and those other operators, to either sell their bus lines to the GCRTA, or, in the alternative to be forced out of business. Such action culminated in the out-right refusal of Defendant GCRTA to renew its operating agreements with Plaintiff, or, any other bus line operator, in Cuyahoga County.

(b) Since 1975, Defendant GCRTA has systematically absorbed the former municipally-owned bus lines

of the Cities of Cleveland, Shaker Heights, and Euclid; and is currently engaged in an attempt to absorb the Maple Heights Bus Line, and the NOMBL, which, if accomplished, would result in a complete monopoly of bus service by Defendant GCRTA in Cuyahoga County.

(c) Since 1975, Defendant GCRTA has purchased many new buses for operation of RTA lines in Cuyahoga County, but has refused to aid, assist, or provide Plaintiff with any of these new buses for operation by the NOMBL.

In count two of its complaint North Olmsted alleges that the subsidies that the GCRTA receives enables it to exploit its market position and entice customers away from the NOMBL because the subsidies

provide the GCRTA with a means to offer "anticompetitive fare rates substantially lower than any which (North Olmsted) can offer through the ownership and operation of the NOMBL." Therefore, North Olmsted alleges that the refusal of the GCRTA to renew the operating agreement, which, as noted above provides a full financial subsidy for North Olmsted's transit operation, constitutes an anticompetitive attempt to monopolize in violation of Section 2 of the Sherman Antitrust Act. For the reasons which follow this court holds that the activities of the GCRTA are exempt from the scope of the federal antitrust laws including Section 2 of the Sherman Antitrust Act.

In Parker v. Brown, 317 U.S. 341, 63 S.Ct. 307 (1943), the United States Supreme Court rejected a raisin producer's claim that a California marketing program, established pursuant to statute, violated

the Sherman Act. The Court reasoned that since California had adopted the marketing program for the specific purpose of restricting competition and maintaining prices, no antitrust liability could be imposed for the anticompetitive conduct complained of because it constituted action in furtherance of a state legislative mandate.

Specifically, the Court held:

> The Sherman Act makes no mention of the state as such, and gives no hint that it was intended to restrain state action or official action directed by a state. ...There is no suggestion of a purpose to restrain state action in the Act's legislative history. The sponsor of the bill which was ultimately enacted as the Sherman Act declared that it prevented only "business combinations."

317 U.S. at 351, 63 S. Ct. at 313.

Concerning the lack of legislative history, the Court emphasized:

> We find nothing in the language of the Sherman Act or in its history which suggests that its purpose was to restrain a state or its officers or agents from activities directed by its legislature. In a dual system of government in which, under the Constitution, the states are sovereign, save only as Congress may constitutionally subtract from their authority, an unexpressed purpose to nullify a state's control over its officers and agents is not lightly to be attributed to Congress.

317 U.S. at 350, 351, 63 S. Ct. at 313.

Although the Parker doctrine does not lead to the "facile conclusion that action by any public official automatically con-

fers exemption," Padgett v. Louisville & Jefferson County Air Board, 492 F.2d 1258, 1259 (6th Cir. 1974), it clearly exempts "anticompetitive conduct engaged in as an act of government by the State as sovereign, or, by its subdivision, pursuant to state policy to displace competition with regulation or monopoly public service." City of Lafayette, Louisiana v. Louisiana Power & Light Co., 435 U.S. 389, 413, 98 S. Ct. 1123, 1137 (1978). In Lafayette, the Court further held that, "(w)hile a subordinate governmental unit's claim to Parker immunity is not as readily established as the same claim by a state government sued as such, we agree with the Court of Appeals that an adequate state mandate for anticompetitive activities of cities and other subordinate governmental units exists when it is found from the authority given a governmental entity to operate in a

particular area, that the legislature contemplated the kind of action complained of." (Citations omitted). City of Lafayette, Louisiana Power & Light Co., supra, 435 U.S. at 415, 98 S. Ct. at 1138.

In the instant case, the State of Ohio, as an act of government, has authorized the establishment of regional transit authorities, defined the territorial jurisdiction in which they may operate and delineated their rights, powers and duties with great specificity in OHIO REV. CODE ANN. 306.30 through 306.54, 306.70 and 306.71 (Page). Pursuant to those statutes it is clear that the GCRTA was validly created for the express purpose of providing a unified and dependable public transportation service within Cuyahoga County. When the statutes are examined in detail it is equally clear that the Ohio legislature was not ignorant of the possibility that a municipally owned

transit system would either fail or be absorbed upon the formation of a regional transit authority within the county in which that municipality was located. Accordingly, this court holds that the GCRTA, by engaging in the conduct which is the subject of North Olmsted's complaint, is acting under authority granted it by the Ohio legislature and that the legislature contemplated the kind of conduct of which North Olmsted complains. See: City of Lafayette, Louisiana v. Louisiana Power & Light Co., supra. See also: Ladue Local Lines, Inc. v. Bi-State Development Agency, 433 F.2d 131 (8th Cir. 1970), in which the Eighth Circuit Court of Appeals held that when a political body created by the legislature of Illinois and Missouri which, in operating bus transportation facilities, was acting under legislative authorization that was granted pursuant to a legislative policy that the public interest

would best be served by a unified public transportation system, the activity was exempt from the federal antitrust laws, even though it created a monopoly that harmed the competitive interests of private bus concerns.

In count three of its complaint North Olmsted alleges that any attempt by the GCRTA to monopolize a public utility servicing Cuyahoga County is in direct conflict with Article 18, Section 4 of the Ohio Constitution. For the reasons which follow this court holds that North Olmsted's claim is barred by the doctrine of res judicata.

The United States Supreme Court has held that "under the doctrine of res judicata, a judgment on the merits in a prior suit involving the same parties or their privies bars a second suit based on the same cause of action." Lawlor v. National Screen Service Corp., 349 U.S. 322, 326, 75 S.Ct.

865, 867 (1955); Parklane Hosiery Co., Inc. Shore, 439 U.S. 322, 99 S.Ct. 645 (1979). The doctrine is premised in an overall fairness rational, Shimman v. Frank, 625 F.2d 80 (6th Cir. 1980), and "is not discretionary in nature, but rather, is embodied in a congressional mandate that the courts must conscientiously follow." James v. Gerber Products Co., 587 F.2d 324, 327 (6th Cir. 1978), citing 28 U.S.C. Section 1738.[6] In the prior action between the parties the Cuyahoga County Court of Common

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6 28 U.S.C. Section 1738 provides in pertinent part as follows:

> Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken. (Emphasis added).

Pleas held that "(n)either the Constitution nor the statutes of the State of Ohio prohibit the (GCRTA) from operating parallel transit service lines through...North Olmsted," and that North Olmsted was "not granted freedom from competition, nor exclusive territorial rights in the operation of (its) transit systems either by the Ohio Constitution or the statutes of the State of Ohio." Clearly, North Olmsted's state constitutional claims have been litigated. The fact that North Olmsted did not allege an attempt to monopolize in the Court of Common Pleas does not alter this result because as held by the Cuyahoga Court of Appeals, Article 18, Section 4 of the Ohio Constitution is simply "permissive in nature permitting a municipality to create and operate any public utility for the benefit of its citizens." Ct. App. Op., p. 7. It, therefore, neither imposes liability nor

creates a cause of action for an attempt to monopolize.

Accordingly, the defendant's motion for summary judgment is granted. Fed. R. Civ. P. 56(c). See: Smith v. Hudson, 600 F.2d (6th Cir.), cert. denied, 444 U.S. 986, 100 S. Ct. 495 (1979); Bryant v. Commonwealth of Kentucky, 490 F.2d 1273 (6th Cir. 1974); Daily Press Inc. v. United Press Int'l., 412 F.2d 126 (6th Cir.) cert. denied, 396 U.S. 990, 90 S. Ct. 489 (1969).

IT IS SO ORDERED.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CITY OF NORTH OLMSTED, OHIO, Plaintiff,	CASE NO. C81-2058
	Judge John M. Manos
v.	O R D E R
GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY, Defendant.	

Pursuant to the Memorandum of Opinion issued in the above-captioned case this date, the defendant's motion for summary judgment is granted.

IT IS SO ORDERED.

UNITED STATES DISTRICT JUDGE

THE SUPREME COURT OF OHIO

THE STATE OF OHIO,)
) 1981 Term
City of Columubs.) To wit: Sep 16 1981

: No. 81-1087
Greater Cleveland Regional Transit Authority, et al, : APPEAL FROM THE COURT OF APPEALS
:
Appellees, : For Cuyahoga County
:
vs. :
:
City of North Olmsted et al.,
:
Appellants. :

This cause, here on appeal as of right from the Court of Appeals for Cuyahoga County was heard in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

FOR YOUR INFORMATION
ONLY, NOT FOR FILING

It is further ordered that a copy of this entry be certified to the Clerk of the Court of Appeals for Cuyahoga County for

entry.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court this _____ day of _____, 19____.

_____Clerk

_____Deputy

THE SUPREME COURT OF OHIO

THE STATE OF OHIO, City of Columbus.) 1981 Term)To wit: Sep 16 1981

No. 81-1087

Greater Cleveland Regional Transit Authority et al,

Appellees,

vs.

City of North Olmsted, et al.,

Appellants.

APPEAL FROM THE COURT OF APPEALS for CUYAHOGA County

This cause, here on appeal as of right from the Court of Appeals for Cuyahoga County, was heard in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

FOR YOUR INFORMATION ONLY, NOT FOR FILING

It is further ordered that a copy of

this entry be certified to the Clerk of the Court of Appeals for Cuyahoga County for entry.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court this _____day of _____, 19_____

_____ Clerk

_____ Deputy

THE SUPREME COURT OF OHIO

THE STATE OF OHIO,)
) 1981 Term
City of Columbus.) To wit: Sep 16 1981

No. 81-1087

Greater Cleveland Regional Transit Authority et al,

Appellees,

vs.

City of North Olmsted et al.,

Appellants.

MOTIONS FOR AN ORDER DIRECTING THE COURT OF APPEALS

For Cuyahoga County

TO CERTIFY ITS RECORD

It is ordered by the Court that this motion is overruled.

FOR YOUR INFORMATION
ONLY, NOT FOR FILING

COSTS:

Motion Fee, $20.00, paid by City of North Olmsted, Motion Fee, $20.00 paid by Thomas J. Keenan.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the

foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court

this_____day of _____,

19_____

_____Clerk

_____Deputy

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT
COUNTY OF CUYAHOGA

No. 42982, 43117,
& 43419

GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY, ET AL.,

APPELLEE

VS.

CITY OF MAPLE HEIGHTS AND CITY OF NORTH OLMSTED

(43419 - City of North Olmsted, Appellant v. Greater Cleveland Regional Transit Authority, et al, Appellees)

APPEAL FROM

COMMON PLEAS COURT

No. 999314, 999315, & 999358

JOURNAL ENTRY AND OPINION

DATE May 14, 1981

COOK, P.J.:

This cause came on to be heard upon the pleadings and the transcript of the evidence and the record in the Common Pleas Court, and was argued by counsel for the parties; and upon consideration, the court finds no error prejudicial to the appellant and therefore the judgment of the Common Pleas Court is affirmed. Each assignment of error

was reviewed and upon review the following disposition made:

On December 30, 1974, the Board of County Commissioners of Cuyahoga County and the Council of the City of Cleveland, by resolution and ordinance respectively, created the Greater Cleveland Transit Authority, hereinafter referred to as "Authority."

Both the county's resolution and the city's ordinance provided:

> "That a regional transit authority created by the City and County with territorial boundaries and jurisdiction coextensive with the territorial boundaries of the County of Cuyahoga be, and the same is, created by this resolution and the ordinance of the Council of the City of Cleveland pursuant to Sections 306.30 through 306.54 and 306.70 and 306.71 of the Ohio Revised Code, as amended by

Amended Substitute Senate Bill No. 544, effective June 29, 1974."

Subsequent to the creation of the Authority, Cuyahoga County and the City of Cleveland entered into a Memorandum of Understanding whereby the Cleveland Transit System was transferred to the Authority, contingent upon the enactment of a sales tax for transit purposes of not less than one percent.

On July 22, 1975, the electors of Cuyahoga County approved a "sales and use tax" to be "levied for all transit purposes of the Greater Cleveland Transit Authority at a rate not exceeding 1% for a continuing period of time."

In the summer of 1975, the Authority entered into "Public Transportation Operating Agreements" with the Cities of North Olmsted and Maple Heights, pursuant to R.C. 306.35(G), which set forth that the

municipalities were to provide transit services from October 2, 1975 to October 2, 1977 in return for the Authority providing full subsidy of the transit operations of the respective municipalities and other financial considerations. The Agreements further provided, as to each municipality, that the Authority "may eventually assume operation, ownership and control of the City's scheduled bus service, and that this matter shall be a subject of negotiation between the parties before the expiration of the term of this Agreement."

The Authority's Agreements with North Olmsted and Maple Heights were extended by mutual resolution several times, the last of these extensions expiring on March 5, 1980. However, the operation and subsidy of the two bus systems is presently continuing pursuant to orders of the trial court..

From mid 1978 to June, 1979, there were separate negotiations between the parties with respect to the subject matter of the acquisition by the Authority of the North Olmsted and Maple Heights bus lines, as provided for in their earlier Agreements. However, such negotiations were fruitless.

On June 8, 1979, the Authority filed complaints against the Cities of North Olmsted and Maple Heights seeking a declaratory judgment that:

"1. it was the intent of the legislative enactments creating R.T.A. that there be established in Cuyahoga County one single, unified transit authority;

"2. that a contract dated January 21, 1976 between R.T.A. and Maple Heights, and a similar contract dated October 5,

1975 between R.T.A. and North Olmsted were null and void, as a result of the term of such contracts having expired;

"3. that R.T.A. has no further legal obligation, contractual or statutory, to either the municipalities of Maple Heights or North Olmsted, and

"4. That R.T.A., however, is required by law to render transportation services throughout Cuyahoga County, servicing all of the residents thereof without regard to whether such service may be rendered in competition with other publicly owned transit facilities.

On the same date, North Olmsted filed a complaint against the Cleveland Regional Transit Authority, the C.R.T.A.'s Board of

Trustees and Cuyahoga County seeking a declaratory judgment:

"1. that R.T.A. had been illegally formed,

"2. that R.T.A. was under a continuing statutory duty to subsidize North Olmsted's municipally owned transit system."

The City of Maple Heights filed a counterclaim in R.T.A.'s action seeking a declaratory judgment:

"1. that R.T.A. may not acquire ownership of the transit facility owned by Maple Heights without consent of that City;

"2. that R.T.A. is legally bound to continue its contractual relationship with Maple Heights."

The cases were consolidated in the trial court for trial.

On September 24, 1980, the trial court

rendered a declaratory judgment holding, among other matters:

"1. that R.T.A. is a duly created regional transit authority, established in accordance with Ohio statute, and having territorial jurisdiction throughout Cuyahoga County;

"2. that the Ohio Revised Code does not require the consent of all governmental entities situated within Cuyahoga County and having a proprietary interest in land transportation systems, as a condition precedent to the formation of a regional transit authority;

"3. that the contracts known as Public Transportation Operating Agreements between R.T.A. and the Cities of Maple Heights and

North Olmsted, respectively, had expired, and that R.T.A. had no continuing obligations thereunder;

"4. that R.T.A. was not under a legal duty to continue its relationship with the Cities of Maple Heights and North Olmsted; and

"5. that R.T.A. is required to implement and maintain continuing county-wide transit service by any feasible method, which may include the purchase of suburban lines, entering into new contracts with municipalities conducting transit lines, or the operation of transit lines parallel to those conducted by municipally owned transit systems."

Timely appeals were filed by North Olmsted and Maple Heights which were con-

solidated for purposes of briefing and arguments in this court.

Appellants have assigned the following errors:

1. The trial court erred in concluding that the Greater Cleveland Regional Transit Authority can exercise jurisdiction within the municipalities of Maple Heights and North Olmsted without first obtaining the consent of these municipalities to the exercise of such jurisdiction.
2. The trial court erred in concluding that RTA has lawful authority to enter into unlimited competition with the municipally owned bus lines of Maple Heights and North Olmsted without the consent of these municipalities.
3. The trial court erred in concluding

ing that RTA was not obligated to cooperate with Maple Heights and North Olmsted in providing county-wide mass transit services to these cities.

The assigned errors are without merit.

The creation of regional transit authorities is governed by Chapter 306 of the Revised Code.

R.C. 306.32, in pertinent parts, reads as follows:

"Any county, or any two or more counties, municipal corporations, townships, or any combination thereof, may create a regional transit authority by the adoption of a resolution or ordinance by the board of county commissioners of each county, the legislative authority of each municipal corporation, and the board of township trustees of

each township which is to create or to join in the creation of the regional transit authority...

* * *

"The territorial boundaries of a regional transit authority shall be coextensive with the territorial boundaries of the counties, municipal corporations, and townships included within the regional transit authority....."

The resolution adopted by the Board of County Commissioners of Cuyahoga County and the ordinance passed by the Council of the City of Cleveland established the territorial jurisdiction of the Authority as follows:

"Section 2: That a regional transit authority created by the City and County with territorial boundaries of the County of Cuyahoga be, and the same is, created by this

resolution and the ordinance of the Council of the City of Cleveland..."

The trial court declared that the Greater Cleveland Regional authority can exercise jurisdiction within the municipalities of North Olmsted and Maple Heights without first obtaining their consent to the exercise of such jurisdiction.

The Cities of North Olmsted and Maple Heights contend that such a declaration by the trial court is erroneous. In support of their contention, they argue such a declaration is contrary to the rights granted municipalities by Article XVIII, Section 4, of the Ohio Constitution and Chapter 306 of the Revised Code, the statutory authority for creating regional transit authorities.

Article XVIII, Section 4, of the Ohio Constitution reads, in pertinent part, as follows:

"Any municipality may acquire, construct, own, lease, and operate within or without its corporate limits, any public utility the product or service of which is or is to be supplied to the municipality or its inhabitants, and may contract with others for any such product or service..."

The ownership and operation of a bus line constitutes the operation of a public utility. The Cleveland Railway v. Village of North Olmsted (1935), 130 Ohio St. 144, 148.

The Ohio Supreme Court has subsequently held that the constitutional grant of power to a municipality is self-executing and cannot be denied or limited in any manner by the state legislature. State ex rel. McCann v. City of Defiance (1958),

167 Ohio St. 313, 316; Swank v. Shiloh (1957), 166 Ohio St. 415.

The Cities of North Olmsted and Maple Heights argue that the court's declaration violates their authority to operate their transportation public utilities. In support of this argument, they cite this court's decision in City of Seven Hills v. City of Cleveland (1980, unreported Cases 40114 and 40115, Court of Appeals for Cuyahoga County) as stating that a state legislature has no power to limit or restrict tne authority of a municipality to operate a public utility and that the inclusion of a municipality into a regional authority for the operation of a public utility without that municipality's consent would be a violation of Article XVIII, Section 4, of the Ohio Constitution.

However, Article XVIII, Section 4 of the Ohio Constitution does not grant muni-

cipalities an exclusive right to conduct transit services within or without their corporate boundaries. Said Article is permissive in nature, permitting a municipality to create and operate any public utility for the benefit of its inhabitants. While it is correct that a state legislature cannot limit or restrict such municipal power, in the instant cause, the authority is not seeking to do so and the declaration by the trial court does not attempt to do so.

The City of Seven Hills case, relied upon by the Cities of North Olmsted and Maple Heights, does not support their position. That case concerned an effort by various municipalities, which buy water from the City of Cleveland, to create a regional water district pursuant to Chapter 6119 of the Revised Code and force the City of Cleveland to transfer title to its

municipally owned water system to said regional water district. Chapter 6119 provides that regional water districts might be judicially formed only upon consent of the affected municipalities. Chapter 306, on the other hand, provides regional transit authorities may be created by counties, as in the instant case, and that the jurisdiction of such an authority is coextensive with the boundaries of the political subdivisions creating the regional transit authority, in the subject authority, Cuyahoga County. Consent of the political subdivisions within the territorial limits of a county created regional transit system is not required.

The Cities of North Olmsted and Maple Heights further argue that Chapter 306 of the Revised Code itself requires each political subdivision involved in an authority to pass a resolution or ordinance

which consents to its inclusion within said authority.

While such a position could be taken by the Cities of North Olmsted and Maple Heights if political subdivisions other than the county in which they are located seek to include them in an authority, where the county in which the municipalities are located created a county-wide authority, the jurisdiction of the Authority is the entire county pursuant to the provisions of Chapter 306.

Having determined that where a county creates a regional transit authority for the entire county the jurisdiction of said authority is the entire county, we turn to the question of whether said authority is empowered to extend its transit lines into and through political subdivisions within said county.

The answer to the question is found in

R.C. 306.35(G), which provides a regional transit authority:

> "May acquire, construct, improve, extend, repair, lease, operate, maintain or manage transit facilities within or without its territorial boundaries, deemed necessary to accomplish the purposes of its organization and make charges for the use of transit facilities.

Since the municipalities of North Olmsted and Maple Heights are within the territorial boundaries of the county-wide regional transit authority created by Cuyahoga County and the City of Cleveland, the Authority is authorized to operate transit facilities within said municipalities.

Since Article XVIII, Section 4 of the Ohio Constitution permits municipalities to

own and operate a bus line within its jurisdiction and Chapter 306 of the Revised Code authorizes a county-wide transit authority to operate transit facilities within its territorial boundaries, the possibility of competing bus lines exists in North Olmsted and Maple Heights.

The Appellants consider such a com-competitive bus line would constitute an appropriateion of the municipal bus line. However, the mere act of competition does not constitute the taking of property. Duke Power Company v. Greenwood County (1938), 302 U.S. 485; Alabama Power Company v. Ickes (1938), 302 U.S. 464; Helena Water Works Co. v. Helena (1904), 195 U.S. 383.

Appellants argue the authority cannot operate transit lines within their boundaries without their consent, but local and municipal interests must yield to the larger concerns of the State of Ohio if the regulation of the subject matter affects the general public.

The Ohio Supreme Court in Beachwood v. Board of Elections (1958), 167 Ohio St. 369, at page 371, said:

> "The power of local self-government to municipalities by Article XVIII relates solely to the government and administration of the internal affairs of the municipality, and, in the absence of statute conferring a broader power, municipal legislation must be confined to that area. See Prudential Co-Operative Realty Co. v. City of

Youngstown, 118 Ohio St. 204, 160, 160 N.E. 695. Where a proceeding is such that it affects not only the municipality, itself but the surrounding territory beyond its boundaries, such proceeding is no longer one which falls within the sphere of local self-government but is one which must be governed by the general law of the state.

"To determine whether legislation is such as falls within the area of local self-government, the result of the proceedings thereunder must be considered. If the result affects only the municipality itself, with no extra-territorial effects, the subject is clearly within the power of local self-government and is a matter for the determination

of the municipality. However, if the result is not so confined it becomes a matter for the General Assembly."

In The Cleveland Electric Illuminating Company v. City of Painesville (1960), 15 Ohio St. 2d 125, at page 129, the same court once again set forth the doctrine of statewide concern:

"The power granted under Section 3 of Article XVIII relates to local matters and even in the regulation of such local matters a municipality may not infringe on matters of general and statewide concern.

"As was said in the opinion in State ex rel. McElroy v. Akron, 173 Ohio St. 189, 19 O.O. (2d) 3, 5:

'Due to our changing society, many things which were once considered

a matter of purely local concern and subject strictly to local regulation, if any, have now become a matter of statewide concern, creating the necessity for statewide control.' "

In the cause sub judice, Chapter 306 is a legislative enactment by the legislature of Ohio in an area of statewide concern, public transportation. While such legislation does not conflict with the power of municipalities to own and operate their own transit systems, a municipality cannot override the powers of regional transit systems, authorized by state legislation to operate such systems throughout their jurisdictions, including municipalities which be within a county-wide transit authority.

We find no federal statute or policy precluding competition between federally

funded regional transit authorities and municipal transit lines, as contended by the Cities of North Olmsted and Maple Heights.

Nor do we find any authority for the proposition advanced by the two Cities that the trial court erred in declaring that the Authority is not obligated to cooperate with the Cities of North Olmsted and Maple Heights in providing county-wide mass transit services to those cities.

R.C. 306.35(G) and (M) and R.C. 306.44 provide a regional transit authority:

> "(G) May acquire, construct, improve, extend, repair, lease, operate, maintain, or manage transit facilities within or without its territorial boundaries, deemed necessary to accomplish the purposes of its organization and make charges for the use of transit facilities." (Emphasis added) -79-

"(M) May provide by agreement with any county, including the counties within its territorial boundaries, or any municipal corporation or any combination thereof for the acquisition, construction, improvement, extension, maintenance, or operation of any transit facility to be owned and operated by and such county or municipal corporation and the terms on which it shall be acquired, leased, constructed, maintained, or operated, and the amount of the cost and expense thereof to be paid by each such county or municipal corporation." (Emphasis added),

306.44 Parties to contract

"The board of trustees of a regional transit authority may enter into

such contracts or other arrangements with the United States government or any department thereof, with the state government of this or other states, with counties, municipalities, townships, or other governmental agencies created by or under the authority of the laws of the state or other states, with persons, with public corporations and private corporations as may be necessary or convenient for the making of surveys, investigations, or reports thereon, and for the exercise of the powers granted by sections 306.30 to 306.47, inclusive, of the Revised Code." (Emphasis added)

Thus, we conclude the determination of whether or not to enter into agreements with

the Cities of North Olmsted and Maple Heights is within the sound discretion of the Greater Cleveland Regional Transit Authority.

The courts may not use their injunctive power to control the discretion of governmental boards or officers in matters within their authority and discretion in the absence of an abuse of their discretion. Cincinnati v. Wehehoft (1948), 119 Ohio St. 136.

The fact that a sales tax has been levied countywide for the purposes of the Greater Regional Transit Authority does not require the Authority to subsidize the municipally owned bus lines of North Olmsted and Maple Heights. While the Ohio Constitution requires that taxation be uniform, such requirement does not relate to the expenditure of the money so raised.

The Ohio Supreme Court has held that there need not be an equal distribution of the potential benefits of a countywide tax. State ex rel. Speeth v. Carney, Auditor (1955), 163 Ohio St. 159; State ex rel. Bowman v. Board of County Commissioners (1931), 124 Ohio St. 174.

Judgment affirmed.

It is ordered that appellee(s) recover of appellant(s) their costs herein taxed.

This Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Exceptions.

RECEIVED FOR FILING May 14 1981
Gerald E. Fuerst, Clerk - By_____ Dep.

Judge

Robert E. Cook
PRESIDING JUDGE

STILLMAN, J.,
SILBERT, J., CONCUR
(STILLMAN, J., AND SILBERT, J.,
Retired of the Eighth Appellate
District, Sitting by Assignment;
COOK, P.J., of the Eleventh Appellate
District, Sitting by Assignment)

APPEARANCES:

For appellees: John T. Corrigan; Thomas E. Wagner; Craig S. Miller; Malcolm Douglas and Edwart Opett; For appellants: James V. Shipan; Thomas J. Keenan; Michael R. Gareau and Daniel J. Ryan.

N.B. This entry is made pursuant to the third sentence of Rule 22(D), Ohio Rules of Appellate Procedure. This is an announcement of decision (see Rule 26). Ten (10) days from the date hereof this judgment will be stamped to indicate journalization, at which time it will become the judgment and order of the court and

time period for review will begin to run.

IN THE COURT OF COMMON PLEAS

CUYAHOGA COUNTY, OHIO

GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY, et al.	CASE NOS. 999314, 999315 and 999358
Plaintiffs,	JUDGE DAVID T. MATIA
-vs-	
CITY OF MAPLE HEIGHTS, CITY OF NORTH OLMSTED,	FINDINGS OF FACT AND CONCLUSIONS OF LAW
Defendants.	

***

I. FINDINGS OF FACT

1. These proceedings were commenced on June 8, 1979. On that date, the Greater Cleveland Regional Transit Authority (R.T.A.) filed its Complaints against the Cities of Maple Heights and North Olmsted, respectively, in Case Numbers 999314 and 999315, seeking a declaratory judgment with respect to R.T.A.'s rights, duties and obligations under Sections 306.30 et seq. of the Ohio Revised Code, Resolution No. 2865 of the

Board of County Commissioners of Cuyahoga County, Ordinance No. 2380-B-74 of the City of Cleveland, and certain Public Transportation Operating Agreements between R.T.A. and the Cities of Maple Heights and North Olmsted, respectively.

2. On the same date, the City of North Olmsted filed its Complaint in Case No. 999358, naming as Defendants R.T.A., the R.T.A. Board of Trustees, County of Cuyahoga, and City of Cleveland, and seeking a declaration with respect to its rights under Section 306.30 et seq. of the Ohio Revised Code and the Public Transportation Operating Agreement between North Olmsted and R.T.A.

3. Thereafter, the City of Maple Heights filed its Counterclaim for declaratory judgment against R.T.A., seeking a declaration with respect to that City's rights under Chapter 306 of the Ohio Re-

vised Code, and the Public Transportation Operating Agreement between Maple Heights and R.T.A.

4. The jurisdiction of this Court was invoked by the parties under Chapter 2721 of the Ohio Revised Code, and Rule 57 of the Ohio Rules of Civil Procedure, and the actions were consolidated for trial upon motion of North Olmsted.

5. On December 30, 1974, the Board of Commissioners of Cuyahoga County enacted Resolution No. 2865 creating R.T.A., and establishing the terms and conditions for the transfer of the Cleveland Transit System to R.T.A. The Resolution of the Board of County Commissioners determined "that the creation of a regional transit authority is necessary to provide a coordinated, consolidated, comprehensive public mass transportation system..." That Resolution further provided, with

vised Code, and the Public Transportation Operating Agreement between Maple Heights and R.T.A.

4. The jurisdiction of this Court was invoked by the parties under Chapter 2721 of the Ohio Revised Code, and Rule 57 of the Ohio Rules of Civil Procedure, and the actions were consolidated for trial upon motion of North Olmsted.

5. On December 30, 1974, the Board of Commissioners of Cuyahoga County enacted Resolution No. 2865 creating R.T.A., and establishing the terms and conditions for the transfer of the Cleveland Transit System to R.T.A. The Resolution of the Board of County Commissioners determined "that the creation of a regional transit authority is necessary to provide a coordinated, consolidated, comprehensive public mass transportation system..." That Resolution further provided, with

respect to the territorial jurisdiction of R.T.A.:

> "That a regional transit authority created by the City and County with territorial boundaries and jurisdiction coextensive with the territorial boundaries of the County of Cuyahoga be, and the same is, created by this resolution and the ordinance of the Council of the City of Cleveland pursuant to Sections 306.30 through 306.70 and 306.71 of the Ohio Revised Code, as amended by Amended Substitute Senate Bill No. 544, effective June 29, 1974."

6. On December 30, 1974, the Council of the City of Cleveland enacted Ordinance No. 2380-B-74, also authorizing the creation of R.T.A., and containing provisions identical to those set forth in Resolution 2865 of

the Board of County Commissioners.

7. At the time of the creation of R.T.A., there were five municipally owned transit systems operating within Cuyahoga County: the transit systems owned and operated by the Cities of Cleveland, Shaker Heights, Euclid, Maple Heights and North Olmsted, respectively.

8. On May 21, 1975, the City of Cleveland, the Transit Board of the City of Cleveland, the Board of Commissioners of Cuyahoga County, and three designated representatives of the Cuyahoga County Mayors' and Managers' Association, entered into a Memorandum of Understanding for the transfer to R.T.A. of the transit system then owned by the City of Cleveland and conducted by the Transit Board of that City.. The transfer was contingent upon the enactment and approval by the electors of Cuyahoga County of a sales tax levy of not

less than one percent (1%) for transit purposes.

9. On July 22, 1975, the City of Shaker Heights entered into a Memorandum of Understanding with R.T.A., agreeing to transfer all operating assets of the City of Shaker Heights Rapid Transit to R.T.A. subject to the condition precedent, that the electors of Cuyahoga County pass a one per cent (1%) sales tax to be used for public mass transit purposes.

10. On July 1, 1979, after having operated its transit system pursuant to the terms and conditions of a Public Transportation Operating Agreement with R.T.A., dated December 5, 1975, the City of Euclid agreed to transfer its municipally owned transit system to R.T.A.

11. The only monetary compensation received by the Cities of Cleveland, Shaker Heights and Euclid for the transfer from

R.T.A. of their municipally owned transit systems to R.T.A. consisted of payment to those municipalities of unreimbursed capital expenditures made from their general funds.

12. On July 22, 1975, the electors of Cuyahoga County, including the electors of the Cities of North Olmsted, Maple Heights, Cleveland, Shaker Heights and Euclid, approved the following proposition by a seventy-two percent (72%) majority:

> "Shall a sales and use tax be levied for all transit purposes of the Greater Cleveland Regional Transit Authority at a rate not exceeding 1% for a continuing period of time."

The sales tax so authorized by the electors of Cuyahoga County has, at all times thereafter, been levied throughout the territorial jurisdiction of Cuyahoga County.

13. On October 5, 1975, the City of North Olmsted and R.T.A. executed and entered into an agreement entitled "Public Transportation Operating Agreement" (Operating Agreement), pursuant to which North Olmsted agreed to provide certain transit services, and R.T.A. agreed to provide a full financial subsidy of North Olmsted's transit operations. That Operating Agreement contained the following provision with respect to the term thereof:

> "13. Term. The term of this Agreement shall commence on the 5th day of October, 1975, and expire on the 5th day of October, 1977, unless extended by mutual agreement of the parties hereto evidenced in a writing signed by each of such parties.
>
> It is contemplated by the parties

that the Authority may eventually assume operation, ownership and control of the City's scheduled bus service, and that this matter shall be a subject of negotiation between the parties before the expiration of the term of this Agreement."

14. The Operating Agreement between North Olmsted and R.T.A. also provided for the payment by R.T.A. of North Olmsted's bonded indebtedness, incurred by North Olmsted for the purchase of twelve buses acquired by it in 1970 and 1971. Pursuant to that contractual provision, R.T.A. made debt service payments in the total amount of Two Hundred Seventy-Five Thouasand Four Hundred Eighty-Four Dollars ($275,484.00).

15. On January 21, 1976, effective as of October 5, 1975, the City of Maple Heights and R.T.A. executed and entered into an

agreement entitled "Public Transportation Operating Agreement" (Operating Agreement), pursuant to which the City of Maple Heights agreed to provide certain transit services, and R.T.A. agreed to subsidize fully Maple Heights' transit operations. That Operating Agreement provided as follows, with respect to the term thereof:

> "13. Term. The term of this Agreement shall commence on the 5th day of October, 1975, and expire on the 5th day of October, 1977, unless extended by mutual agreement of the parties hereto evidenced in a writing signed by each of such parties.
>
> It is contemplated by the parties that the Authority may eventually assume operation, ownership, and control of the City's scheduled bus service, and that

this matter shall be a subject of negotiation between the parties before the expiration of the term of this Agreement."

16. The Agreement further provided for the payment by R.T.A. to Maple Heights of Forty-Seven Thousand None Hundred Seventy-Seven Dollars ($47,977.00) during 1975 as reimbursement to Maple Heights for certain transit improvements, and the additional payment to Maple Heights of Two Hundred Forty-six Thousand Five Hundred Dollars ($246,500.00) during 1976 for the purpose of permitting Maple Heights to repay monies borrowed by it from other City funds, which payments were made to Maple Heights by R.T.A.

17. Upon the expiration of the Public Transportation Operating Agreements on October 5, 1977, R.T.A., through its Board of Trustees, and the Cities of North Olmsted

and Maple Heights, through their respective City Councils, mutually authorized the extension of said Operating Agreements for a period of one year, until October 5, 1978.

18. Pursuant to legislative resolutions by the Board of Trustees of R.T.A., said Operating Agreements were extended for various periods of time, until March 5, 1980.

19. On various occasions prior to March 5, 1980, there were negotiations between R.T.A. and the Cities of Maple Heights and North Olmsted, respectively, concerning the continuation of the relationship between R.T.A. and the Defendant municipalities.

20. The Council of the City of Maple Heights authorized that City's representatives to negotiate only with respect to an extension of the then existing Operating Agreement, and not with regard to the

eventual acquisition by R.T.A. of the operation, ownership and control of that City's scheduled bus service.

21. Negotiations between R.T.A. and Maple Heights did not result in any agreement with respect to the continuation of the contractual relationship between R.T.A. and Maple Heights, or any agreement regarding the eventual acquisition by R.T.A. of the ownership, operation and control of the City's scheduled bus service.

22. Nor did negotiations between R.T.A. and North Olmsted result in any agreement concerning the continuation of the contractual relationship between R.T.A. and North Olmsted, or any agreement regarding the eventual acquisition by R.T.A. of the ownership, operation and control of the City's scheduled bus service.

23. R.T.A. fulfilled all of its contractual obligations under said Operating

Agreements to the Cities of Maple Heights and North Olmsted.

24. The evidence does not show that R.T.A. has repeatedly or wrongfully threatened the Cities of North Olmsted or Maple Heights with termination of the Operating Agreement relationship in order to wrongfully coerce those Cities to enter into an agreement to transfer their municipally owned transit systems to R.T.A.

25. The Operating Agreements between R.T.A. and the Cities of Maple Heights and North Olmsted, respectively, have expired.

26. The provisions of the respective Operating Agreements were, however, extended by a Preliminary Injunction issued February 26, 1980 by this Court pending trial of the litigation upon its merits and determination thereof by the Court.

II. CONCLUSIONS OF LAW

1. This Court has jurisdiction to issue

a declaratory judgment pursuant to Chapter 2721 of the Ohio Revised Code and Rule 57 of the Ohio Rules of Civil Procedure with respect to all issues raised in Cases Numbered 999314, 999315, and 999358.

2. The Greater Cleveland Regional Transit Authority is a political subdivision of the State of Ohio, organized and existing pursuant to and in accordance with Section 306.30 through 306.54, 306.70 and 306.71 of the Revised Code of the State of Ohio and is engaged in providing public transportation services throughout Cuyahoga County, Ohio.

3. Section 306.32 of the Ohio Revised Code does not require that the City of Cleveland and the County of Cuyahoga secure the consent of all governmental entities situated within Cuyahoga County and having a proprietary interest in a land transportation system as a condition precedent to

the formation of a Regional Transit Authority.

4. The Territorial jurisdiction of the Greater Cleveland Regional Transit Authority is countywide and such Authority has the statutory duty to provide transportation service to the ridership throughout Cuyahoga County.

5. The one percent (1%) Sales and Use Tax for Rapid Transit Authority purposes was submitted to the electorate in the manner provided by law, and is valid.

6. Chapter 5739 of the Revised Code of the State of Ohio does not require that the Greater Cleveland Regional Transit Authority get commitments from all political subdivisions in Cuyahoga County to participate in or join in such Authority as a condition precedent to the levy of the county-wide one percent (1%) Sales and Use Tax.

7. The payment by residents of Maple Heights and North Olmsted of a sales tax levied countywide for the purpose of the Greater Cleveland Regional Transit Authority does not require the equal distribution of potential benefits in the form of monetary subsidies in proportion to the burdens of the tax.

8. The Public Transportation Operating Agreements between the Greater Cleveland Regional Transit Authority and the Cities of Maple Heights and North Olmsted have expired by lapse of time and the Greater Cleveland Regional Transit Authority has no continuing obligations under the terms of said Operating Agreements.

9. The Greater Cleveland Regional Transit Authority is not vested with an absolute right to acquire the title and ownership of a publicly owned municipal transit system without the consent of the

municipality. The Court is without power to compel the Cities to exercise their discretionary power of sale.

10. The Greater Cleveland Regional Transit Authority is under no statutory duty to continue its relationship with the Cities of Maple Heights and North Olmsted under the terms of the Operating Agreements, nor does such a duty arise on the theory of "estoppel" or "vested interest".

11. Neither the Constitution nor the statutes of the State of Ohio prohibit the Greater Cleveland Regional Transit Authority from operating parallel transit service lines through the Cities of Maple Heights and North Olmsted.

12. Statutory authority enabling the Greater Cleveland Regional Transit Authority to operate transit facilities, parallel or otherwise, within or without its territorial boundaries is found in Section 306.35 of

the Ohio Revised Code of the State of Ohio.

13. Municipal corporations are not granted freedom from competition, nor exclusive territorial rights in the operation of their transit systems, either by the Ohio Constitution or the statutes of the State of Ohio.

14. The fact that the operation of parallel competitive service lines by the Greater Cleveland Regional Transit Authority would affect adversely the value of and the profitability of suburban transit systems does not, in and of itself, constitute an unlawful appropriation of property, nor an invasion of home rule powers of the municipalities.

15. The one percent (1%) Sales and Use Tax by law is levied upon all residents throughout Cuyahoga County for transit authority purposes, and all residents of said County are entitled to share in the

.idership benefits flowing from such tax.

16. The suburban ridership must be afforded continuing transit service at its present level of quality and frequency, and, therefore, the Greater Cleveland Regional Transit Authority is required to implement and to maintain such degree of countywide service by any feasible method, whether it be by purchase of suburban lines, by entering into operating agreements with the suburbs or by operating parallel transit lines wherever necessary.

DAVID T. MATIA, JUDGE

Dated: October 15th, 1980

STATE OF OHIO	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CUYAHOGA	)	CASE NOS. 999314, 999315 and 999358
		JUDGE DAVID T. MATIA
GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY, et al.	)	
Plaintiffs,	)	
vs.	)	JUDGMENT
CITY OF MAPLE HEIGHTS CITY OF NORTH OLMSTED	)	
Defendants.	)	

This action came on for trial before the Court sitting without a jury on the 21st day of July, 1980, and thereafter, upon the complaint of the Greater Cleveland Regional Transit Authority for declaratory judgment against the respective defendants, upon the counterclaim of the City of Maple Heights for declaratory judgment, and upon the complaint of the City of North Olmsted for declaratory judgment and injunctive relief.

The Court having heard the testimony adduced on trial and having examined the proofs offered by the respective parties together with the legal briefs submitted by them and the issues having been duly tried and a decision having been duly rendered: now, therefore

IT IS ORDERED, ADJUDGED AND DECLARED the rights and the status of the respective parties are as follows:

1. The Greater Cleveland Regional Transit Authority is a subdivision of the State of Ohio, organized and existing pursuant to and in accordance with Section 306.30 through 306.54, 306,70 and 306.71 of the Revised Code of the State of Ohio and is engaged in providing public transportation services throughout Cuyahoga County, Ohio.

2. Section 306.32 of the Ohio Revised Code does not require that the City of

Cleveland and the County of Cuyahoga secure the consent of all governmental entities situated within Cuyahoga County and having a proprietary interest in a land transportation system as a condition precedent to the formation of a Regional Transit Authority.

3. The territorial jurisdiction of the Greater Cleveland Regional Transit Authority is county wide and such Authority has the statutory duty to provide transportation service to the ridership throughout Cuyahoga County.

4. The one percent (1%) Sales and Use Tax for Rapid Transit Authority purposes was submitted to the electorate in the manner provided by law and is valid.

5. Chapter 5739 of the Revised Code of the State of Ohio does not require that the Greater Cleveland Regional Transit Authority get commitments from all political

subdivisions in Cuyahoga County to participate in or join in such Authority as a condition precedent to the levy of the county-wide one percent (1%) Sales and Use Tax.

6. The payment by residents of Maple Heights and North Olmsted of a sales tax levied countywide for the purpose of the Greater Cleveland Regional Transit Authority does not require the equal distribution of potential benefits in the form of monetary subsidies in proportion to the burdens of the tax levied.

7. The public transportation operating agreements between the Greater Cleveland Regional Transit Authority and the Cities of Maple Heights and North Olmsted have expired by lapse of time and the Greater Cleveland Regional Transit Authority has no continuing obligations under the terms of said operating agreements.

8. The Greater Cleveland Regional Transit Authority is not vested with an absolute right to acquire the title and ownership of a publicly owned municipal transit system without the consent of the municipality. The Court is without power to compel the Cities to exercise their discretionary power of sale.

9. The Greater Cleveland Regional Transit Authority is under no statutory duty to continue its relationship with the Cities of Maple Heights and North Olmsted under the terms of the operating agreements nor does such a duty arise on the theory of "estoppel" or "vested interest."

10. Neither the Constitution nor the Statutes of the State of Ohio prohibit the Greater Cleveland Regional Transit Authority from operating parallel transit service lines through the Cities of Maple Heights and North Olmsted.

11. Statutory authority enabling the Greater Cleveland Regional Transit Authority to operate transit facilities, parallel or otherwise, within or without its territorial boundaries is found in Section 306.35 of the Revised Code of the State of Ohio.

12. Municipal corporations are not granted freedom from competition nor exclusive territorial rights in the operation of their transit systems either by the Ohio Constitution or the Statutes of the State of Ohio.

13. The fact that the operation of parallel competitive service lines by the Greater Cleveland Regional Transit Authority would affect adversely the value of and the profitability of suburban transit systems does not, in and of itself, constitute an unlawful appropriation of property nor an invasion of home rule powers of the municipalities.

14. The one percent (1%) Sales and Use Tax by law is levied upon all residents throughout Cuyahoga County for transit authority purposes and all residents of said county are entitled to share in the ridership benefits flowing from such tax.

The suburban ridership must be afforded continuing transit service at its present level of quality and frequency, and, therefore, the Greater Cleveland Regional Transit Authority is required to implement and to maintain such degree of county-wide service by any feasible method whether it be by purchase of suburban lines, by entering into operating agreements with the suburbs or by operating parallel transit lines wherever necessary.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in order to avoid a catastrophic breakdown of transit service within the municipalities of Maple Heights and

North Olmsted during the transition period resulting in irreparable harm to the riding public of those communities, the parties to this litigation are ordered to maintain the "status quo", now in effect, in accordance with the terms of the preliminary injunction previously ordered by this Court under date of February 26, 1980. The "status quo" is to remain in effect until such time as the Greater Cleveland Rapid Transit Authority exercises one of the options set forth in paragraph 14 hereof or until the 1st day of February, 1981, whichever comes sooner.

The Complaint in Case No. 999358 is dismissed as to the defendant, County of Cuyahoga, Ohio, and the defendant, City of Cleveland, Ohio, at the costs of the plaintiff, City of North Olmsted, Ohio.

All other parties in Cases No. 999314, 999315 and 999358 are to pay their own

costs.

Dated at Cleveland, Ohio, this 24th day of September, 1980.

DAVID T. MATIA, JUDGE
Court of Common Pleas

83-1589

Office - Supreme Court, U.S.
FILED
MAR 1 1984
ALEXANDER L. STEVAS
CLERK

NO.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

CITY OF NORTH OLMSTED, OHIO,

PETITIONER

vs.

GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY,

RESPONDENT

APPENDIX B: CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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28 U.S.C. Section 1254(1)

Section 1254. Courts of appeals; certiorari; appeal; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

Section 2 of the Sherman Antitrust Act, 15 U.S.C. Section 2

"Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court."

Article XVIII, Section 4, of the Ohio Constitution

"Any municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public utility the products or service of which is or is to be supplied to the municipality or its inhabitants, and may contract with others for any such product or service. The acquisition of any such utility may be by condemnation or otherwise, and a municipality may acquire thereby the use of, or full title to, the property and franchise of any company or person supplying to the municipality or its inhabitants the service or product of any such utility."

REGIONAL TRANSIT AUTHORITY

306.30 Definitions

As used in sections 306.30 to 306.53, inclusive, of the Revised Code, "transit facility" means any:

(A) Street railway, motor bus, tramline, subway, monorail, rapid transit, aeroplane, helicopter, ferry, or other ground or water transportation system having as its primary purpose the regularly scheduled mass movement of passengers between locations within the territorial boundaries of a regional transit authority, including all right-of-way, power lines, roling stock, equipment, machinery, terminals, buildings, administration and maintenance and repair facilities and supporting parking facilities, and franchise rights attendant thereto, but excluding therefrom trucks and facilities designed for use in the movement of property by truck;

(B) Docks, wharves, warehouses, piers, and other port, terminal, or transportation facilities and marinas;

(C) Facilities used, available for use, or designed for use to aid in the safe taking off or landing of aircraft, for the safety, storage, and maintenance of aircraft, for the comfort and accomodation of users of air transportation, including persons, property, and mail, or from the safe and efficient operation and maintenance of an airport; and buildings and facilities as are reasonably necessary for the comfort and accomodation of the users of transit facilities; or

(D) Any combination of the foregoing.

HISTORY: 1970 S 125, eff. 8-25-70
131 v H 421

306.32 Resolution or ordinance to create authority; filing procedures; referendum; territorial boundaries

Any county, or any two or more counties, municipal corporations, townships, or any combination thereof, may create a regional transit authority by the adoption of a resolution or ordinance by the board of county commissioners of each county, the legislative authority of each municipal corporation, and the board of township trustees of each township which is to create or to join in the creation of the regional transit authority. Such resolution or ordinance shall state:

(A) The necessity for the creation of a regional transit authority;

(B) The counties, municipal corporations, or townships which are to create or to join in the creation of the regional transit authority;

(C) The official name by which the regional transit authority shall be known;

(D) The place in which the principal office of the regional transit authority will be located or the manner in which it may be selected;

(E) The number, term, and compensation, which shall not exceed the sum of fifty dollars for each board and committee meeting attended by a member, of the members of the board of trustees of the regional transit authority;

(F) The manner in which vacancies on the board of trustees of the regional transit authority shall be filled;

(G) The manner and to what extent

the expenses of the regional transit authority shall be apportioned among the counties, municipal corporations, and townships creating it;

(H) The purposes, including the kinds of transit facilities, for which the regional transit authority is organized.

The regional transit authority provided for in such resolution or ordinance shall be deemed to be created upon the adoption of such resolution or ordinance by the board of county commissioners of each county, the legislative authority of each municipal corporation, and the board of township trustees of each township enumerated in the resolution or ordinance.

The resolution or ordinance creating a regional transit authority may be amended to include additional counties, municipal

corporations, or townships or for any other purpose, by the adoption of such amendment by the board of county commissioners of each county, the legislative authority of each municipal corporation, and the board of township trustees of each township which has created or joined or proposes to join the regional transit authority.

After each county, municipal corporation, and township which has created or joined or proposes to join the regional transit authority has adopted its resolution or ordinance approving inclusion of additional counties, municipal corporations, or townships in such regional transit authority, a copy of each such resolution or ordinance shall be filed with the clerk of the board of the county commissioners of each county, of the legislative authority of each municipal corporation, and of the board of trustees of each township proposed

to be included in the regional transit authority. Such inclusion is effective when all such filing has been completed, unless the regional transit authority to which territory is to be added has authority to levy an ad valorem tax on property, or a sales tax, within its territorial boundaries, in which event such inclusion shall become effective on the sixtieth day after the last such filing is accomplished, unless, prior to the expiration of such sixty day period, qualified electors residing in the area proposed to be added to the regional transit authority, equal in number to at least ten percent of the qualified electors from such area who voted for governor at the last gubernatorial election, file a petition of referendum against such inclusion. Any petition of referendum filed under this section shall be filed at the office of the secretary of

the board of trustees of the regional transit authority. The person presenting the petition shall be given a receipt containing thereon the time of the day, the date, and the purpose of the petition. The secretary of the board of trustees of the regional transit authority shall cause the appropriate board or boards of elections to check the sufficiency of signatures on any petition of referendum filed under this section and, if found to be sufficient, shall present the petition to the board of trustees at a meeting of said board which occurs not later than thirty days following the filing of said petition. Upon presentation to the board of trustees of a petition of referendum against the proposed inclusion, the board of trustees shall promptly certify the proposal to the board or boards of elections for the purpose of having the proposal placed on the ballot at

the next general or primary election which occurs not less than seventy-five days after the date of the meeting of said board, or at a special election, the date of which shall be specified in the certification, which date shall be not less than seventy-five days after the date of such meeting of the board. Signatures on a petition of referendum may be withdrawn up to and including the meeting of the board of trustees certifying the proposal to the appropriate board or boards of elections. If territory of more than one county, municipal corporation, or township is to be added to the regional transit authority, the electors of such territories of the counties, municipal corporations, or townships which are to be added shall vote as a district and the majority affirmative vote shall be determined by the vote cast in such district as a whole. Upon certifi-

cation of a proposal to the appropriate board or boards of elections pursuant to this section, such board or boards of election shall make the necessary arrangements for the submission of such questions to the electors of the territory to be added to the regional transit authority qualified to vote thereon and the election shall be held, canvassed, and certified in the manner provided for the submissions of tax levies under section 5705.191 of the Revised Code, except that the question appearing on the ballot shall read:

"Shall the territory within the.....

.....
(Name or names of political subdivisions to be joined)

be added to.....regional
(Name)

transit authority?" and shall a(n)

.....(here insert type of tax or taxes) at a rate of taxation not to exceed....(here insert maximum tax

rate or rates) be levied for all transit purposes?"

If the question is approved by at least a majority of the electors voting on such question, such joinder is immediately effective and the regional transit authority may extend the levy of such tax against all the taxable property within the territory which has been added. If such question is approved at a general election or at a special election occurring prior thereto but after the fifteenth day of July, the regional transit authority may amend its budget and resolution adopted pursuant to section 5705.34 of the Revised Code and such levy shall be placed on the current tax list and duplicate and collected as other taxes are collected from all taxable property within the territorial boundaries of the regional transit authority, including the territory within each political sub-

division added as a result of such election.

The territorial boundaries of a regional transit authority shall be co-extensive with the territorial boundaries of the counties, municipal corporations, and townships included within the regional transit authority, provided that the same area may be included in more than one regional transit authority so long as the regional transit authorities are not organized for purposes as provided for in the resolutions or ordinances creating the same, and any amendment thereto, relating to the same kinds of transit facilities; and provided further, that if a regional transit authority includes only a portion of an entire county, a regional transit authority for the same purposes may be created in the remaining portion of the same county by resolution of the board of county commissioners acting alone or in

conjunction with municipal corporations and townships as provided in this section.

No regional transit authority shall be organized after January 1, 1975 to include any area already included in regional transit authority, except that any regional transit authority organized after the effective date of this section and having territorial boundaries entirely within a single county shall, upon adoption by the board of county commissioners of such county of a resolution creating a regional transit authority including within its territorial jurisdiction the existing regional transit authority and for purposes including the purposes for which such existing regional transit authority was created, be dissolved and its territory included in such new regional transit authority. Any resolution creating such new regional

transit authority shall make adequate provision for satisfaction of the obligations of the dissolved regional transit authority.

HISTORY, 1980 H 1062, eff. 3-23-81
1974 S 544; 1970 S 125; 132 v H 1;
131 v H 421

306.321 Inclusion of additional subdivisions by amendment.

The resolution or ordinance creating a regional transit authority may be amended to include additional counties, municipal corporations, or townships by the adoption of such amendment by the board of county commissioners of each county, the legislative authority of each municipal corporation, and the board of township trustees of each township which has created or theretofore joined or proposes to join the regional transit authority.

After each county, municipal corpor-

ation, and township which has created or theretofore joined or proposes to join the regional transit authority has adopted its resolution or ordinance approving inclusion of additional counties, municipal corporations, or townships in such regional transit authority, a copy of each such resolution or ordinance shall be filed with the clerk of the board of the county commissioners of each county, of the legislative authority of each municipal corporation, and of the board of trustees of each township proposed to be included in the regional transit authority.

Any ordinances or resolutions adopted pursuant to this section approving inclusion of additional counties, municipal corporations, or townships in such regional transit authority shall provide that the board of trustees of such regional transit authority must, not later than the tenth

day following the day on which the filing of the ordinances or resolutions, as required by the immediately preceding paragraph, is completed, adopt its resolution providing for submission to the electors of the regional transit authority as enlarged, of the question pursuant to section 306.49 of the Revised Code, of the renewal, the renewal and increase, or the increase of, or the imposition of an additional, ad valorem tax, or of the question pursuant to section 306.70 of the Revised Code, of the renewal, the renewal and increase, or the increase of, or the imposition of an additional, sales and use tax. The resolution submitting the question of the tax shall specify the date of the election which shall be not less than seventy-five days after certification of such resolution to the board of elections and which shall be consistent with the requirements of

section 3501.01 of the Revised Code. The inclusion of the territory of the additonal counties, municipal corporations, or townships in the regional transit authority shall be effective as of the date on which the resolution of the board of trustees of the regional transit authority is adopted submitting the question to the electors, provided that until the question is approved, existing contracts providing payment for transit services within the added territory shall remain in effect and transit services shall not be affected by the inclusion of the additional territory. The resolution shall be certified to the board of elections and the election shall be held, canvassed, and certified as provided in section 306.49 of the Revised Code in the case of an ad valorem tax or in section 306.70 of the Revised Code in the case of a sales and use tax.

If the question of the tax which is submitted is not approved by a majority of the electors of the enlarged regional transit authority voting thereon, as of the date following the day on which the results of such election became conclusive, the additional counties, municipal corporations, or townships, which had been included in the regional transit authority as of the date of the adoption of the resolution submitting to the electors the question, shall be removed from the territory of such regional transit authority and shall no longer be a part of that authority without any further action by either the political subdivisions which were included in the authority prior to the adoption of the resolution submitting the question to the electors or of the political subdivisions added to the authority as a result of the adoption of such

resolution. The regional transit authority reduced to its territory as it existed prior to the inclusion of the additonal counties, municipal corporations, or townships, shall be entitled to levy and collect any ad valorem or sales and use taxes which it was authorized to levy and collect prior to the enlargement of its territory and for which authorization has not expired, as if such enlargement had not occurred.

If the question of the tax which is submitted provides for a sales and use tax to be imposed and the question is approved, and the regional transit authority had previously been authorized pursuant to section 306.49 of the Revised Code to levy an ad valorem tax, then the regional transit authority shall appropriate from the first moneys received from such sales and use tax in each year, the full amount

required in order to pay the principal of and interest on any notes of the regional transit authority issued pursuant to section 306-49 of the Revised Code, in anticipation of the collection of such ad valorem tax; and shall not thereafter levy and collect the ad valorem tax previously approved unless such levy and collection is necessary to pay the principal of and interest on notes issued in anticipation of such tax in order to avoid impairing the obligation of the contract between the regional transit authority and the note holders.

If the question of the additional or renewal tax levy is approved, then such tax may be levied and collected as is otherwise provided for an ad valorem tax or a sales and use tax imposed by a regional transit authority, provided that if a question relating to an ad valorem tax is

approved at the general election or at a special election occurring prior thereto, but after the fifteenth day of July, the regional transit authority may amend its budget for its next fiscal year and its resolution adopted pursuant to section 5705.34 of the Revised Code or adopt such resolution, and such levy shall be placed on the current tax list and duplicate and collected as all other taxes are collected from all taxable property within the enlarged territory of the regional transit authority including the territory within each political subdivision which has been added to the regional transit authority pursuant to this section, provided further that if a question relating to sales and use tax is approved after the fifteenth day of July in any calendar year, th regional transit authority may amend its budget for the current and next fiscal year

and any resolution adopted pursuant to section 5705.34 of the Revised Code, to reflect the imposition of such sales and use tax and shall amend its budget for the next fiscal year and any resolution adopted pursuant to section 5705.34 of the Revised Code to comply with the immediately preceding paragraph. If the budget of the regional transit authority is amended pursuant to this paragraph, the county auditor shall prepare and deliver an amended certificate of estimated resources to reflect the change in anticipated revenues of the regional transit authority.

The procedures of this section are in addition to and an alternative to those established in section 306.32 of the Revised Code for joining to a regional transit authority additional counties, municipal corporations, or townships.

HISTORY: 1981 H 235, eff. 1-1-82
1980 H 1062; 1975 S 300

306.33 Board of trustees; officers

Within sixty days after a regional transit authority has been created under section 306.32 of the Revised Code, the board of trustees for such regional transit authority shall be appointed as provided in this section.

Members of a board of trustees of an authority created by the exclusive action of a county shall be appointed by the county commissioners of such county. A board of trustees of an authority created by two or more political subdivisions shall consist of such number of members, who shall have such qualifications and who shall be appointed by such public officers as shall be provided in the resolutions or ordinances creating such authority or any amendments thereto. If the resolutions or ordinances creating such authority, or any amendments thereto, so provide, then

the governor shall appoint such members of the board of a regional transit authority as provided in such resolutions and ordinances. The appointing authority may at any time remove a trustee for misfeasance, nonfeasance, or malfeasance in office.

The trustees of any authority first appointed shall serve staggered terms. Thereafter each successor shall serve terms of three years, except that any person appointed to fill a vacancy shall be appointed to only the unexpired term. Any appointed trustee is eligible for reappointment.

A majority of the board of trustees constitute a quorum, the affirmative vote of which is necessary for any action taken by the authority. No vacancy in the board shall impair the rights of a quorum to exercise all rights and perform all the

duties of the authority.

Each member of the board of trustees, before entering upon his official duties, shall take and subscribe to an oath or affirmation that he will honestly, faithfully, and impartially perform the duties of his office, and that he will not be personally interested directly or indirectly in any contract let by the regional transit authority.

After each member of the board has taken the oath as prescribed by this section the board shall meet and organize by electing one of its members as president and another as vice-president, who shall hold their respective offices until the next annual meeting of the board as provided in its bylaws. At each annual meeting thereafter the board shall elect from its membership a president and a vice-president who shall serve for a term of one year.

The board shall appoint and fix the compensation of a secretary-treasurer, who shall be the fiscal officer and shall not be a member of the board and who shall serve at the pleasure of the board. Each member of the board of trustees is entitled to receive from the regional transit authority reimbursement for his reasonable expenses in the performance of his duties.

HISTORY: 1974 S 544, eff. 6-29-74

1970 S 125; 131 v H 421

306.34 Board of trustees to manage and conduct affairs

All the power and authority granted to a regional transit authority shall be vested in and exercised by its board of trustees which shall manage and conduct its affairs. The board shall, within the limitations of sections 306.30 to 306.47, inclusive, of the Revised Code, by its rules and regulations, provide the pro-

cedure for its actions, the manner of selection of its president, vice-president, secretary-treasurer, and other officers and employees, their titles, terms of office, compensation, duties, number and qualifications, and any other lawful subject necessary to the operation of the regional transit authority and the exercise of the powers granted to it.

HISTORY: 131 v H 421, eff. 11-1-65

306.35 Powers and duties

Upon the creation of a regional transit authority as provided by section 306.32 of the Revised Code, and upon the qualifying of its board of trustees and the election of a president and a vice-president, said authority shall exercise in its own name all the rights, powers, and duties vested in and conferred upon it by sections 306.30 to 306.53 of the Revised Code, and, subject to such reservations,

limitations, and qualifications as are set forth therein, said regional transit authority:

(A) May sue or be sued in its corporate name;

(B) May make contracts in the exercise of the rights, powers, and duties conferred upon it;

(C) May adopt and at will alter a seal and use such seal by causing it to be impressed, affixed, reproduced, or otherwise used, but failure to affix the seal shall not affect the validity of any instrument;

(D) May make, adopt, amend, and repeal bylaws for the administration of its affairs and rules for the control of the administration and operation of transit facilities under its jurisdiction, and for the exercise of all of its rights of ownership therein;

(E) May fix, alter, and collect fares, rates, and rentals and other charges for the use of transit facilities under its jurisdiction to be determined exclusively by it for the purpose of providing for the payment of the expenses of the regional transit authority, the acquisition, construction, improvement, extension, repair, maintenance, and operation of transit facilities under its jurisdiction, the payment of principal and interest on its obligations, and to fulfill the terms of any agreements made with purchasers or holders of any such obligations, or with any person or political subdivision;

(F) Shall have jurisdiction, control, possession, and supervision of all property, rights, easements, licenses, moneys, contracts, accounts, liens, books, records, maps, or other property rights and

interests conveyed, delivered, transferred, or assigned to it;

(G) May acquire, construct, improve, extend, repair, lease, operate, maintain or manage transit facilities within or without its territorial boundaries, deemed necessary to accomplish the purposes of its organization and make changes for the use of transit facilities;

(H) May levy and collect taxes as provided in sections 306.40 and 306.49 of the Revised Code;

(I) May issue bonds secured by its general credit as provided in section 306.40 of the Revised Code;

(J) May hold, encumber, control, acquire by donation, purchase, or condemnation, construct, own, lease as lessee or lessor, use, and sell real and personal property, or any interest or right therein, within or without its territorial bound-

aries, for the location or protection of transit facilities and improvements and access thereto, the relocation of buildings, structures, and improvements situated on lands acquired by the regional transet authority, or for any other necessary purpose, or for obtaining or storing materials to be used in constructing, maintaining, and improving transit facilities under its jurisdiction;

(K) May exercise the power of eminent domain to acquire property or any interest therein, within or without its territorial boundaries, which is necessary or proper for the construction or efficient operation of any transit facility or access thereto under its jurisdiction in accordance with section 306.36 of the Revised Code;

(L) May provide by agreement with any county, including the counties within its

territorial boundaries, or any municipal corporation or any combination thereof for the making of necessary surveys, appraisals, and examinations preliminary to the acquisition or construction of any transit facility and the amount of the expense thereof to be paid by each such county or municipal corporation;

(M) May provide by agreement with any county, including the counties within its territorial boundaries, or any municipal corporation or any combination thereof for the acquisition, construction, improvement, extension, maintenance, or operation of any transit facility owned or to be owned and operated by it or owned or to be owned and operated by any such county or municipal corporation and the terms on which it shall be acquired, leased, constructed, maintained, or operated, and the amount of the cost and expense

thereof to be paid by each such county or municipal corporation;

(N) May issue revenue bonds for the purpose of acquiring, replacing, improving, extending, enlarging, or constructing any facility or permanent improvement which it is authorized to acquire, replace, improve, extend, enlarge, or construct, including all costs in connection with and incidental to such acquisition, replacement, improvement, extension, enlargement, or construction, and the financing thereof, as provided by section 306.37 of the Revised Code;

(O) May enter into and supervise franchise agreements for the operation of a transit system;

(P) May accept the assignment of and then supervise an existing franchise agreement for the operation of a transit system;

(Q) May exercise a right to purchase a transit system in accordance with the acquisition terms of an existing franchise agreement; and in connection with such purchase the regional transit authority may issue revenue bonds as provided by section 306.37 of the Revised Code or issue bonds secured by its general credit as provided in section 306.40 of the Revised Code.

(R) May apply for and accept grants or loans from the United States, the state, or other public body for the purpose of providing for the development or improvement of transit facilities, mass transportation facilities, equipment, techniques, methods, or services, and grants or loans needed to exercise a right to purchase a transit system pursuant to agreement with the owner of such transit facilities, or for providing lawful

financial assistance to existing transit systems; and may provide any consideration which may be required in order to obtain such grants or loans from the United States the state, or other public body, either of which grants or loans may be evidenced by the issuance of revenue bonds as provided by section 306.37 of the Revised Code or general obligation bonds as provided by section 306.40 of the Revised Code;

(S) May employ and fix the compensation of consulting engineers, superintendents, managers, and such other engineering, construction, accounting and financial experts, attorneys, and other employees and agents necessary for the accomplishment of its purposes;

(T) May procure insurance against loss to it by reason of damages to its properties resulting from fire, theft, accident, or other casualties or by reason

of its liability for any damages to perssons or property occurring in the construction or operation of transit facilities under its jurisdiction or the conduct of its activities;

(U) May maintain such funds as it deems necessary for the efficient performance of its duties;

(V) May direct its agents or employees, when properly identified in writing, after at least five days' written notice, to enter upon lands within or without its territorial boundaries in order to make surveys and examinations preliminary to the location and construction of transit facilities, without liability to it or its agents or employees except for actual damage done;

(W) May, on its own motion, request the appropriate zoning board, as defined in section 4563.03 of the Revised Code,

to establish and enforce zoning regulations pertaining to any transit facility under its jurisdiction in the manner prescribed by sections 4563.01 to 4563.21 of the Revised Code;

(X) Shall, if it acquires any existing transit system, assume all the employer's obligations under any existing labor contract between the employees and management of the system. The board shall, if it acquires, constructs, controls, or operates any such facilities, negotiate arrangements to protect the interests of employees affected by such acquisition, construction, control, or operation. Such arrangements shall include, but are not limited to:

(1) The preservation of rights, privileges, and benefits under existing collective bargaining agreements or otherwise, the preservation of rights and

benefits under any existing pension plans covering prior service, and continued participation in social security in addition to participation in the public employees retirement system as required in Chapter 145 of the Revised Code;

(2) The continuation of collective bargaining rights;

(3) The protection of individual employees against a worsening of their positions with respect to their employment;

(4) Assurances of employment to employees of such transit systems and priority reemployment of employees terminated or laid off;

(5) Paid training or retraining program;

(6) Signed written labor agreements.

Such arrangements may include provisions for the submission of labor

disputes to final and binding arbitration.

(Y) May provide for and maintain such security operations as are necessary for the protection of persons and property under its jurisdiction and control. Such employees as the board of trustees of a regional transit authority employs for that purpose are vested with the same powers of arrest as police officers under section 2935.03 of the Revised Code in protecting the property of the regional transit authority and the person and property of passengers. Before exercising such powers, such employee shall take an oath and give a bond to the state in such sum that the board prescribes for the proper performance of his duties.

Such employees shall be required to complete training for the position to which they have been appointed as required by the Ohio peace officers training

council as authorized in section 109.78 of the Revised Code, or be otherwise qualified. The cost of such training shall be provided by the regional transit authority.

(Z) May procure a policy or policies insuring members of its board of trustees against liability on account of damages or injury to persons and property resulting from any act or omission of a member in his official capacity as a member of the board or resulting solely out of his membership thereon.

HISTORY: 1977 S 194. eff. 7-8-77
1976 S 427; 1970 S 125; 131 v H 421

306.36 Appropriation of property; payment in lieu of taxes

(A) The board of trustees of a regional transit authority may exercise the power of eminent domain to appropriate any land, rights, rights-of-way,

franchise, power lines, easements, or other property, within or without the territorial boundaries of the regional transit authority, necessary or proper for the construction or efficient operation of any transit facility or access thereto under its jurisdiction pursuant to the procedure provided in sections 163.01 to 163.22, inclusive, of the Revised Code, and subject to division (B) of this section, provided that a regional transit authority shall not proceed to so appropriate real property outside its territorial boundaries, until it has served at the office of the county commissioners of the county in which it is proposed to appropriate real property, a notice describing the real property to be taken and the purpose for which it is proposed to be taken, and such county commissioners have entered on their journal within thirty days after such service a

resolution approving such appropriation.

(B) Nothing contained in sections 306.30 to 306.53, inclusive, of the Revised Code authorizes a regional transit authority to appropriate any land, rights, rights-of-way, franchises, or easements belonging to the state or a municipal corporation without the consent of the state or municipal corporation, and no regional transit authority shall exercise the right of eminent domain to acquire any certificate of public convenience and necessity, or any part thereof, issued to a motor transportation company by the public utilities commission of Ohio or by the interstate commerce commission of the United States, or to take or disturb other property or facilities belonging to any political subdivision, public corporation, public utility, or common carrier, which property or facility is necessary and

convenient in the operation of such political subdivision, public corporation, public utility, or common carrier, unless provision is made for the restoration, relocation, or duplication of such property or facility, or upon the election of such political subdivision, public corporation, public utility, or common carrier, for the payment of compensation, if any, at the sole cost of the regional transit authority, provided:

(1) If any restoration or duplication of any property or facility proposed to be made under this division involves a relocation of such property or facility the new facility and location thereof shall be of at least comparable utilitarian value and effectiveness and such relocation shall not impair the ability of the public utility or common carrier to compete in its original area of operation.

(2) If any restoration or duplication of any property or facility proposed to be made under this division involves a relocation of such property or facility, the regional transit authority shall acquire no interest or right in or to the appropriated property or facility until the relocated property or facility is available for use and until marketable title thereto has been transferred to the public utility or common carrier.

(C) When real property is acquired which is located outside the territorial boundaries of the regional transit authority and which is removed from the tax duplicate, the regional transit authority shall pay annually to the county treasurer of the county in which such property is located, commencing with the first tax year in which such property is removed from the tax duplicate, an amount of money in lieu of taxes

equal to the smaller of the following:

(1) The last annual installment of taxes due from the acquired property before removal from the tax duplicate;

(2) An amount equal to the difference between the combined revenue from real estate taxes of all the taxing districts in which such property is located in the tax year immediately prior to the removal of such acquired property from the tax duplicate, and either:

(a) The total revenue which would be produced by the tax rate of each such taxing district in the tax year immediately prior to the removal of such acquired property from the tax duplicate, applied to the real estate tax duplicate of each of such taxing districts in each tax year subsequent to the year of removal; or

(b) The combined revenue from real estate taxes of all such taxing districts

in each tax year subsequent to the year of removal, whichever is the greater.

The county auditor of each county in which such property is located shall apportion each such annual payment to each taxing district as if such annual payment has been levied and collected as a tax.

Such annual payments shall never again be made after they have ceased.

The regional transit authority may be exempted from such payment by agreement of the affected taxing district or districts in the county in which such property is located.

HISTORY: 1970 S 125, eff. 8-25-70

306.37 Revenue bonds

A regional transit authority which proposes to acquire by purchase or otherwise, or proposes to construct, replace, improve, extend, enlarge, maintain, or operate any transit facility, and desires

to raise money for any one or more of such purposes or for the purpose of repaying or refunding any outstanding issue of bonds of the regional transit authority or pay any obligation assumed by it or of repaying or refunding any outstanding issue of bonds or notes of any political subdivision issued to acquire, construct, replace, improve, extend, enlarge, or maintain any transit facility acquired by the regional transit authority or repay any advances or loans made to the regional transit authority by any person or political subdivision, may issue revenue bonds therefor which bonds shall not be secured by the general credit of the regional transit authority or by the general credit of the state or any political subdivision.

Such revenue bonds shall have all the qualities of negotiable instruments and shall be secured only by a pledge of and

a lien on the revenues of the regional transit authority derived from rentals, fees, rates, charges, or other revenues from any transit facility of the regional transit authority as are designated in said resolution, including but not limited to the transit facility to be acquired, constructed, replaced, improved, extended, enlarged, or maintained with the proceeds of said bond issue, after provision only for the reasonable cost of operating and maintaining the transit facility of the regional transit authority so designated.

Said bonds shall further be secured by the covenant of the regional transit authority to maintain such rentals, fees, rates, charges, or other revenues as will produce revenues sufficient to meet costs of operating and maintaining such transit facility, to meet the interest, principal, and other requirements of such bonds, and

to establish and maintain reserves for the foregoing purposes, and may be secured by a mortgage on any real property or interests therein acquired form the proceeds of such revenue bonds.

HISTORY: 1970 S 125, eff. 8-25-70
131 v H 421

306.38 Bonds secured by trust agreement

At the discretion of the board of trustees of a regional transit authority, the revenue bonds of the regional transit authority may be secured by a trust agreement between the board of trustees on behalf of the regional transit authority and a corporate trustee, which trustee may be any trust company or bank having powers of a trust company, within or without the state.

Such trust agreement may provide for the pledge or assignment of the revenues to

be received, shall not pledge the general credit of the regional transit authority, but may include a mortgage on any real property or interests therein acquired from the proceeds of such revenue bonds. The trust agreement or the resolution providing for the issuance of revenue bonds may set forth the rights and remedies of the bond holders and trustees, including, in the event of a default, appointment of a receiver to administer and operate transit facilities, and may contain such other provisions for protecting and enforcing their rights and remedies as are, in the discretion of the board of trustees, reasonable and proper. Such agreement or resolution may provide for the custody, investment, and disbursement of all moneys derived from the sale of such bonds or from the revenues of the regional transit authority pledging to pay the interest and

principal on such bonds and may provide for the deposit of such funds without regard to section 306.42 of the Revised Code.

HISTORY: 1970 S 125, eff. 8-25-70
131 v H 421

306.39 Interest and maturity of bonds; refunding bonds

Revenue bonds issued by a regional transit authority shall bear interest at the rate or rates approv-d by the board of trustees, shall mature within forty years following the date of issuance, and in such amount, at such times, and in such number of installments as may be provided in the resolution authorizing their issuance. Such resolution shall also provide for the execution and sealing of the bonds and the use of facsimile signatures and facsimile of the seal, the manner of sale of the bonds, and such other terms and con-

ditions relative to the issuance, sale, and retirement of said bonds as the board of trustees in their discretion believe reasonable and proper.

If such bonds are callable, bonds called may be refunded. If revenues prove insufficient to pay maturing bonds, bonds which have matured or are about to mature may be refunded.

HISTORY: 1970 S 125, eff. 8-25-70
1969 S 245; 131 v H 421

306.40 General obligations bonds; use of proceeds; election; tax levy; anticipatory notes; issuance of obligation without vote

The regional transit authority may submit to the electors within its territorial boundaries the question of issuing bonds of such authority and also the necessity of a tax outside the limitation imposed by Section 2 of Article XII, Ohio

Constitution, to pay the interest on and to retire said bonds. Such bonds when so approved by the electors may be issued by the regional transit authority to purchase, acquire, construct, replace, improve, extend, and enlarge any transit facility which serves or will serve an area within the territorial boundaries of the regional transit authority; provided, that the net indebtedness, as defined for a municipal corporation in section 133.03 of the Revised Code, incurred by a regional transit authority shall never exceed five per cent of the total value of all property within the territorial boundaries of the regional transit authority as listed and assessed for taxation, and that no part of the proceeds of such bonds shall at any time be used to meet or defray any of the normal operating expenses of any transit facility or part thereof. The proceedings

for such election and for the issuance and sale of such bonds shall be as provided by section 133.01 to 133.65 of the Revised Code, provided that such a bond issue may be submitted to the electors and such bonds may be issued for any one or more of the purposes set forth in this section. If a majority of those voting upon the proposition vote in favor thereof, the board of trustees of the regional transit authority may proceed with the issue of such bonds and the levy of a tax outside the ten mill limitation, sufficient in amount to pay the interest on and retire such bonds at maturity. Notes may be issued in anticipation of such bonds as provided in section 133.32 of the Revised Code. The board of trustees shall be the taxing authority or bond issuing authority of the regional transit authority.

The regional transit authority may

also issue bonds and notes in anticipation of such bonds for any one or more of the purposes set forth in this section and as provided in sections 133.01 to 133.65 of the Revised Code, without a vote of the electors residing within the territorial boundaries of the authority. Prior to the issuance of such bonds or notes, the fiscal officer of the authority shall file with the board of trustees a certificate showing that the estimated revenues of the authority from sources other than ad valorem taxes on property, after first meeting from all available resources the estimated operation and maintenance expenses of the authority as they become due, are sufficient to pay the principal of and interest on such bonds as they become due, and that the maximum aggregate amount of principal and interest to become payable in any one calendar year on all of the bonds of the

authority issued pursuant to this section without a vote of the electors does not exceed one-tenth of one per cent of the total value of all the property within the territory of the authority as listed and assessed for taxation. To the extent that revenues of the authority from sources other than ad valorem taxes on property, after paying the operation and maintenance expenses of the facilities financed from the proceeds of bonds and notes issued pursuant to this section and any moneys required for the payment of the principal of and interest and any premium on revenue bonds issued by the regional transit authority pursuant to section 306.37 of the Revised Code, are sufficient to pay the principal of and interest on bonds issued pursuant to this section as they become due, such bonds shall not be considered within the five per cent limit-

ation on indebtedness imposed by this section.

HISTORY: 1974 S 544, eff. 6-29-74

1970 S 125; 131 v H 421

306.42 Secretary-treasurer; bond

The secretary-treasurer of the regional transit authority shall be the fiscal officer of the regional transit authority and the custodian of its funds and records and shall assist the board of directors in such particulars as it directs in the performance of its duties.

Before receiving any moneys, the secretary-treasurer shall furnish bond in such amount as is determined by the board of trustees of the regional transit authority with surety satisfactory to it, and all funds coming into the hands of the secretary-treasurer shall be deposited by him to the account of the regional transit authority in one or more such depositories

as are qualified to receive deposits of county funds, which deposits shall be secured in the same manner as county funds are required to be secured. No disbursements shall be made from such funds except in accordance with rules and regulations adopted by the board of trustees of the regional transit authority.

HISTORY: 131 v H 421. eff. 11-1-65

306.43 Contracts; bidding procedures

The board of trustees of a regional transit authority or any officer or employee designated by such board may make any contract for the purchase of supplies or material or for labor for any work, under the supervision of the board, the cost of which shall not exceed five thousand dillars. When an expenditure, other than for the acquisition of real estate, the discharge of noncontractual claims, personal services, or for the product or

services of public utilities, exceeds five thousand dollars, such expenditure shall be made only after a notice calling for bids has been published once a week for two consecutive weeks in at least one newspaper of general circulation within the territorial boundaries of the regional transit authority. A bid for the construction, demolition, alteration, repair, or reconstruction of an improvement shall meet the requirements of section 153.54 of the Revised Code. A bid for any other contract authorized by this section shall be accompanied by a good and approved bond with ample security conditioned on the carrying out of the contract. The board may let the contract to the lowest and best bidder. Such contract shall be in writing and shall be accompanied by or shall refer to plans and specifications for the work to be done, approved by the board. The plans

and specifications shall at all times be made and considered part of the contract. Said contract shall be approved by the board and signed on behalf of the regional transit authority and by the contractor. No sale of any real or personal property or a lease thereof having a term thereof in excess of five years shall be made except with the highest and best bidder after publication of notice for bids in the manner above provided.

Competitive bidding under this section is not required when:

(A) The board of trustees of a regional transit authority, by a two-thirds affirmative vote of its members, determines that a real and present emergency exists and such determination and the reasons therefor are entered in the proceedings of the board, when:

(1) The estimated cost is less than

ten thousand dollars; or

(2) There is actual physical damage to structures or equipment.

(B) Such purchase consists of supplies or a replacement or supplemental part or parts for a product or equipment owned or leased by the regional transit authority and the only source of supply for such supplies, part, or parts is limited to a single supplier;

(C) The lease is a renewal of a lease for electronic data processing equipment, services, or systems;

(D) The sale of routine maintenance materials is made in an emergency situation to another public agency, public transit system, or regional transit authority;

(E) The sale to another public agency, public transit system, or regional transit authority is of capital equipment unique to the operation of a public transit

system and is authorized by a two-thirds affirmative vote of the board of trustees of the regional transit authority making the sale;

(F) Services or supplies are available from a qualified nonprofit agency pursuant to sections 4115.31 to 4115.35 of the Revised Code.

HISTORY: 1980 S 157, eff. 8-1-80

1977 H 1; 1976 S 427, S 430; 1970 S 125; 131 v H 421

306.44 Parties to contract

The board of trustees of a regional transit authority may enter into such contracts or other arrangements with the United States government or any department thereof, with the state government of this or other states, with counties, municipalities, townships, or other governmental agencies created by or under the authority of the laws of the state or other

states, with persons, with public corporations and private corporations as may be necessary or convenient for the making of surveys, investigations, or reports thereon, and for the exercise of the powers granted by sections 306.30 to 306.47, inclusive, of the Revised Code.

HISTORY: 131 v H 421, eff. 11-1-65

306.45 Public employees

All officers and employees of a regional transit authority shall be considered as public employees within the meaning of section 145.01 of the Revised Code and a regional transit authority, its officers, and employees shall be subject to sections 145.01 to 145.57, inclusive, of the Revised Code.

HISTORY: 131 v H 421, eff. 11-1-65

306.46 Limitations on authority

Nothing in sections 306.30 to 306.47, inclusive, of the Revised Code, shall

limit the exercise of the power or authority granted to counties or municipal corporations by sections 307.20, 717.01, and 719.01 of the Revised Code.

HISTORY: 131 v H 421, eff. 11-1-65

306.47 Payment of expenses

The board of county commissioners of any county included within a regional transit authority may appropriate annually, from moneys to the credit of the general fund of the county and not otherwise appropriated, that portion of the expense of the regional transit authority to be paid by such county as provided in the resolution creating or enlarging the regional transit authority adopted under section 306.32 or 306.321 of the Revised Code, or by any amendment thereto.

HISTORY: 1975 S 300, eff. 6-24-75

132 v H 1; 131 v H 421

306.48 Insurance for personnel

A regional transit authority may procure and pay all or any part of the cost of group hospitalization, surgical, major medical, or sickness and accident insurance or a combination of any of the foregoing for the officers and employees of the regional transit authority and their immediate dependents, whether issued by an insurance company, nonprofit medical care corporation, or hospital service association duty authorized to do business in this state.

HISTORY: 1970 S 125, eff. 8-25-70

306.49 Levy of property tax; purpose

(A) Upon the affirmative vote of at least a majority of the qualified electors within the territorial boundaries of the regional transit authority voting on the question at an election held for the purpose of authorizing same, the regional transit authority may levy upon the

property within its territorial boundaries a tax, for all purposes other than bond debt charges, not in excess of five mills annually on the total value of all property as listed and assessed for taxation for any period not exceeding ten years. Such election shall be called, held, canvassed, and certified in the same manner as is provided for elections held pursuant to section 5705.191 of the Revised Code. On approval of such a levy, notes may be issued in anticipation of the collection of the proceeds thereof, in the amount and manner and at the times as are provided in section 5705.193 of the Revised Code for the issuance of notes by a county in anticipation of the proceeds of a tax levy. The regional transit authority may borrow money in anticipation of the collection of current revenues as provided in section

133.20 of the Revised Code.

(B) Whenever the question of a tax upon property as provided in division (A) of this seciton has been rejected at an election, the regional transit authority may thereafter submit the question at a subsequent election to the qualified electors of the largest municipal corporation located within the territorial boundaries of the regional transit authority, and to the qualified electors of any other municipal corporation or township located within such boundaries, when its legislative authority or board of trustees has adopted a resolution requesting to be included in such election and has filed a copy thereof with the secretary-treasurer of the regional transit authority not later than ninety days prior to the date of the election.

Upon the affirmative vote of a majority of the qualified electors of the

largest municipal corporation voting on the question, the regional transit authority may levy a tax as provided in division (A) of this section upon all property within the municipal corporation, and upon all property within any other municipal corporation or township included in the election where a majority of the qualified electors of such municipal corporation or township have authorized the tax.

Whenever a tax upon property has been authorized pursuant to this division, the legislative authority of any municipal corporation, or the board of trustees of any township, that is not subject to the tax, but is included within the territorial boundaries of the regional transit authorith, may adopt a resolution requesting the regional transit authority to hold an election submitting the question of levying the tax to the electors of such muni-

cipal corporation or township.

Any election held pursuant to this division shall be called, held, canvassed, and certified in the same manner as provided for elections held pursuant to division (A) of this section, and any tax authorized by an election held under this division shall grant the same authority and be subject to the same requirements with respect to the issuance of notes and the borrowing of money as provided in division (A) of this section.

(C) Any tax authorized by an election held under this section shall be levied annually as provided in section 5705.34 of the Revised Code during the period authorized, and shall be for the purpose of providing funds necessary for the regional transit authority budget, except that any tax authorized under division (B) of this

section shall be used for such purpose only in those municipal corporations or townships which have authorized the tax. The collection of such tax levy shall conform in all matters to the provisions of the Revised Code governing the collection of taxes and assessments levied by taxing districts, and the same provisions concerning the nonpayment of taxes shall apply to taxes levied pursuant to this section.

HISTORY: 1974 S 544, eff. 6-29-74
1972 H 1100; 1970 S 125

306.50 Bonds constitute lawful investments

Bonds of a regional transit authority issued pursuant to sections 306.30 to 306.53, inclusive, of the Revised Code, shall be lawful investments of banks, savings banks, mutual savings banks, trust companies, building and loan associations, deposit guaranty associations, of the bond

retirement funds or the sinking funds of municipal corporations, boards of education, regional transit authorities, and counties, of the industrial commission, state teachers retirement system, public school employees retirement system, police and firemen's disability and pension fund, public employees retirement system, and domestic insurance companies for life and other than life, and shall be acceptable as security for the deposit of public moneys.

306.51 Exchange of property

The legislative authority of any municipal corporation, county, township, school district, or other political subdivision or taxing district, may convey or lease to, or exchange with, any regional transit authority or any such authority may convey or lease to, or exchange with, a municipal corporation, county, township, school district, or other political sub-

division or taxing district, without competitive bidding and at mutually agreeable terms, any personal or real property, or any interest therein, to be used by the recipient for its purposes.

HISTORY: 1970 S 125, eff. 8-25-70

306.52 Property exempt from taxation

A regional transit authority created under sections 306.30 to 306.53, inclusive of the Revised Code, shall be exempt from and shall not be required to pay any taxes on property, both real and personal, belonging to any such authority, which is used exclusively for any public purpose; provided, such exemption shall not apply to any property belonging to any authority while a private enterprise is a lessee of such property under written lease providing for tenancy for longer than one year.

HISTORY: 1970 S 125, eff. 8-25-70

306.53 Cooperation with governmental agencies

A regional transit authority may cooperate with other governmental agencies of this state, or of the United States, to carry out the purposes set forth in section 306.31 of the Revised Code.

HISTORY: 1970 S.125, eff. 8-25-70

306.54 Dissolution or modification in membership

Subject to making due provisions for the payment and performance of its obligations, the resolution or ordinance creating the regional transit authority may provide for its dissolution or modification in membership under circumstances described therein, or a regional transit authority may be dissolved or its membership modified by its board of trustees with the consent of the subdivision or subdivisions creating such regional transit authority.

In the event of dissolution the properties of the regional transit authority shall be transferred to the subdivision creating it, or if created by more than one subdivision, to the subdivisions creating it in such manner as may be agreed upon by such subdivisions.

HISTORY: 1972 H 1114, eff. 3-22-72

306.70 Submission of question of adoption of sales and use tax

A tax proposed to be levied by a board of county commissioners or by the board of trustees of a regional transit authority pursuant to sections 5739.023 and 5741.022 of the Revised Code shall not become effective until it is submitted to the electors residing within the county or within the territorial boundaries of the regional transit authority and approved by a majority of the electors voting thereon. Such question shall be submitted at a

general election or at a special election on a day specified in the resolution levying the tax and occurring not less than seventy-five days after such resolution is certified to the board of elections, in accordance with section 3505.071 of the Revised Code.

The board of elections of the county or of each county in which any territory of the regional transit authority is located shall make the necessary arrangements for the submission of such question to the electors of the county or regional transit authority, and the election shall be held, canvassed, and certified in the same manner as regular elections for the election of county officers. Notice of the election shall be published in one or more newspapers which in the aggregate are of general circulation in the territory of the county or of the regional transit authority

once a week for four consecutive weeks prior to the election stating the type, rate and purpose of the tax to be levied, the length of time during which the tax will be in effect, and the time and place of the election.

More than one such question may be submitted at the same election. The form of the ballots cast at such shall be:

"Shall a(n) .....(sales and use) ....tax be levied for all transit purposes of the.....(here insert name of the county or regional transit authority) at a rate not exceeding.....(here insert percentage) per cent for.....(here insert number of years the tax is to be in effect, or that it is to be in effect for a continuing period of time)?"

If the tax proposed to be levied is a continuation of an existing tax, whether at the same rate or at an increased or

reduced rate, or an increase in the rate of an existing tax, the notice and ballot form shall so state.

The board of elections to which the resolution was certified shall certify the results of the election to the county auditor of the county or secretary-treasurer of the regional transit authority levying the tax and to the tax commissioner of the state.

HISTORY: 1980 H 1062, eff. 3-23-81
1974 S 544

306.71 Question of reduction of rate of continuing sales and use tax

The question of the decrease of the rate of a tax approved for a continuing period of time by the voters of a county or regional transit authority pursuant to sections 5739.023 and 5741.022 of the Revised Code may be initiated by the filing of a petition with the board of

elections of the county, or in the case of a regional transit authority with the board of elections as determined pursuant to section 3505.071 of the Revised Code, prior to the seventy-fifth day before the general election in any year requesting that an election be held on such question. Such petition shall state the amount of the proposed decrease in the rate of the tax and shall be signed by at least ten per cent of the number of qualified electors residing in such county, or in the territory of the regional transit authority, who voted at the last general election.

After determination by it that such petition is valid, the board of elections shall submit the question to the electors of the county or regional transit authority at the next succeeding general election. The election shall be conducted,

notice thereof shall be given, and the results thereof shall be certified in the manner provided in section 306.70 of the Revised Code. If a majority of the qualified electors voting on such question approve the proposed decrease in rate, such decrease in rate shall become effective on the first day of the second January after such election.

In any case where bonds, or notes in anticipation of bonds, of a regional transit authority have been issued under section 306.40 of the Revised Code without a vote of the electors while the tax proposed to be reduced was in effect, the board of trustees of the regional transit authority shall continue to levy and collect under authority of the original election authorizing the tax a rate of tax in each year which the authority reasonably estimates will produce an amount in that

year equal to the amount of principal of and interest on such bonds as is payable in that year.

HISTORY: 1980 H 1062, eff. 3-23-81

1974 S 544

No. 83-1589

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ALEXANDER L. STEVAS,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

CITY OF NORTH OLMSTED, OHIO,
Petitioner,

vs.

GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether alleged anticompetitive acts of an Ohio Regional Transit Authority, which were fully authorized by the Ohio legislature in an area of statewide concern and which were approved by the Courts of Ohio in litigation between Petitioner and Respondent Regional Transit Authority, constitute state action in furtherance of affirmatively expressed state policy and therefore are exempt from the operation of the federal antitrust laws?

2. Whether Petitioner is precluded under prevailing principles of res judicata and collateral estoppel from relitigating, under the guise of an antitrust claim, issues of law and fact previously decided by Courts of competent jurisdiction in litigation between the identical parties.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

No. 83-1589

CITY OF NORTH OLMSTED, OHIO,
Petitioner,

vs.

GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

COUNTERSTATEMENT OF THE CASE

Notwithstanding the fact that the Petition and arguments advanced therein center about the applicability of the state action exemption to the antitrust laws of the United States, this litigation is a contrived rather than true antitrust case.

In October of 1981, shortly after the conclusion of protracted state court litigation between Petitioner and Respondent in which all issues had been decided favorably

to Respondent, Petitioner commenced the proceedings below by filing an ostensible antitrust complaint with the United States District Court for the Northern District of Ohio. The complaint was little more than a restatement of claims made by Petitioner in the Courts of the State of Ohio. Petitioner simply superimposed upon allegations previously made and adjudicated under Ohio law, a veneer of antitrust allegation and sought relief similar to that which the Courts of Ohio consistently denied.

The relief for which Petitioner prayed was, indeed, the antithesis of remedies generally sought under the antitrust laws. The complaint asked, first, that Respondent be enjoined from competing with Petitioner in providing public transportation services within Petitioner's municipal boundaries and, secondly, sought an order requiring that Respondent reinstitute a prior contractual relationship between the parties litigant under which Respondent subsidized Petitioner's municipal bus line. Competition, far from being the polestar of Petitioner's antitrust claim, was an evil to be enjoined.

In fact, Petitioner's purported antitrust complaint so closely tracked the allegations made by it under state law that Petitioner reasserted a pendant claim under the Ohio Constitution which had previously been adjudicated by the Ohio Courts and which the Supreme Court of Ohio had dismissed for want of substantiality.

As a consequence of the litigation in the court of Ohio between the identical parties, there was a complete record of factual findings and legal determinations upon which the District Court could and did issue a summary judgment against Petitioner. The undisputed facts are as follows:

Petitioner operates a municipally owned bus commuter service. For many years Petitioner was one of several

municipal bus lines providing mass public transportation service in Cuyahoga County, Ohio, which includes the City of Cleveland and more than fifty suburban communities.

Until 1975 the City of Cleveland operated a municipal transit service within Cuyahoga County, Ohio as did various other cities, including Petitioner. In December 1974, the legislative authorities of the City of Cleveland and Cuyahoga County enacted resolutions establishing a regional transit authority in accordance with the terms of the Ohio Regional Transportation Act (§§ 306.30 *et seq.* Ohio Revised Code). The startup of the Regional Transit Authority thus formed was contingent upon the enactment of a county-wide tax issue which was passed by a substantial majority of county electors in the summer of 1975 including the electors of petitioner city. Shortly after the passage of that tax, Cleveland and the City of Shaker Heights, a major suburb adjacent to Cleveland, transferred their respective transit systems to Respondent without monetary consideration other than a return of taxpayer investment. Other municipalities, including Petitioner, retained ownership of their municipal systems and entered into contracts with Respondent Transit Authority under which the municipalities continued to operate their municipal bus lines in return for full subsidy of their operations by Respondent. In the years which followed Respondent acquired other publicly and privately owned transit systems operating in the County. These acquisitions were in full compliance and conformity with the Ohio Regional Transportation Act authorizing such acquisitions. Even the contract between Petitioner and Respondent contemplated that after a two-year period of operation, Respondent might acquire all of Petitioner's transit facilities and consolidate those facilities with Re-

spondent's other operations. Petitioner and Respondent conducted negotiations for acquisition and consolidation of Petitioner's facilities. In 1979, when those negotiations reached an impasse, both parties turned to the Courts of the State of Ohio for a determination of their respective rights and responsibilities under the Ohio Regional Transportation Act.

Petitioner and Respondent each brought declaratory judgment actions regarding their rights, duties and obligations to one another both under their subsidy contract and Ohio law in the Court of Common Pleas of Cuyahoga County, the Ohio Court of general trial jurisdiction. The matter was heard in 1980 and in September of that year the State Court issued its judgment in favor of Respondent. That judgment followed an extensive trial and was predicated upon findings that Respondent had fulfilled all of its contractual responsibilities to Petitioner and had never attempted wrongfully to coerce Petitioner to transfer its bus line to Respondent. The declaratory judgment of the Ohio Court held:

> 1. Respondent was a properly formed Ohio Regional Transit Authority created in accordance with provisions of §§ 306.30 *et seq.* of the Ohio Revised Code and possessed a territorial jurisdiction coextensive with the county in which it is situated.
>
> 2. The Respondent was, at all times, under a statutory duty to provide transportation service to riders throughout the County, including the ridership of Petitioner City.
>
> 3. The subsidy contract between Petitioner and Respondent had expired;
>
> 4. Respondent had no continuing contractual obligation to Petitioner nor any Ohio statutory or

common law duty to continue its contractual relationship with Petitioner or to distribute tax proceeds to petitioner;

5. Neither the Constitution nor the statutes of Ohio prohibit Respondent from operating transit services parallel to or in competition with Petitioner;

6. Ohio municipal corporations, including Petitioner, are not granted freedom from competition in the operation of their municipally owned systems; and

7. It is the legal duty of Respondent to implement and to maintain county-wide regional transportation service. That duty shall be performed by Respondent by any feasible means within its discretion including acquisition of Petitioner's bus line or operation of transit services in competition with Petitioner.

That decision was affirmed by the Court of Appeals of Cuyahoga County, which held:

> *"In the cause sub judice, Chapter 306 is a legislative enactment by the legislature of Ohio in an area of statewide concern, public transportation.* While such legislation does not conflict with the power of municipalities to own and operate their own transit system, a municipality cannot override the powers of regional transit systems, authorized by state legislation to operate such systems throughout their jurisdictions, including municipalities which be within a county-wide transit authority." (emphasis added)

The State Court of Appeals also held that the Ohio Constitutional provision relied upon by Petitioner (Article XVIII, Section 4, Ohio Constitution) did not grant Petitioner exclusive territorial rights within its corporate bounds, holding that the State Constitutional provision in

question was merely a permissive authorization of municipal utility services.

Petitioner then appealed to the Supreme Court of Ohio, which dismissed that appeal *sua sponte* for lack of a substantial State Constitutional question. Then and only then did Petitioner advance its purported antitrust claims in Federal Court.

Shortly after the filing of the complaint below, Respondent moved the District Court for summary judgment. On the basis of the record before it which included extensive findings of facts and conclusions of law issued by the trial court and affirmed by the Court of Appeals of the State of Ohio, the Federal District Court granted summary judgment in favor of Respondent. With respect to the antitrust counts of the complaint that Court concluded that:

1 ". . . the State of Ohio, as an act of government authorized the establishment of regional transit authorities . . . for the express purpose of providing a unified and dependable public transportation service . . ."

2 ". . . GCRTA, by engaging in the conduct which is the subject of North Olmsted's complaint is acting under authority granted to it by the Ohio legislature . . ." and that therefore

3 ". . . the activities of GCRTA are exempt from the scope of the federal antitrust laws, including Section 2 of the Sherman Antitrust Act."

In addition, the Court granted summary judgment to Respondent on the pendant claim advanced by Petitioner under the Ohio Constitution since the issue had been definitively adjudicated by the State Courts.

Appeal was then taken by Petitioner to the United States Court of Appeals by the Sixth Circuit. That Court gave full consideration of all applicable authorities in-

cluding this Court's decision in *Community Communications Co. Inc.* v. *City of Boulder,* 455 U.S. 40, 102 S. Ct. 835, 70 L. Ed. 2d 810 (1982) which was decided shortly after the issuance of summary judgment by District Court. The Court of Appeals on December 2, 1983, affirmed the judgment of the District Court in all respects, holding that:

> "Based on the authoritative interpretation of the Ohio Regional Transportation Act given by the Ohio courts, we conclude that the actions of GCRTA alleged in North Olmsted's complaint were contemplated and authorized by state law and constituted state or state subdivision action in furtherance of "affirmatively expressed state policy . . . Accordingly, North Olmsted is precluded from maintaining its antitrust cause of action."

The Opinion of the Court of Appeals is reported at 722 F. 2d 1284.

Thereafter, Petitioner filed its Petition for a Writ of Certiorari with this Court.

REASONS FOR DENYING THE WRIT

I. This is not a case of compelling importance warranting review by this Court.

Although the State action exemption to the antitrust laws has been scrutinized by this Court on several occasions during recent years, Petitioner has failed to show any special, important or otherwise compelling reason warranting the granting of a Writ of Certiorari in this case.

The District Court and the Court of Appeals, fastidiously applied basic principles of law enunciated by this

Court. Those Courts correctly determined that under the facts alleged by the Petitioner, viewed in light of definitive determinations of fact and law by the Ohio Courts, Petitioner was precluded from maintaining its antitrust claims as alleged in its complaint. Both lower Courts also correctly applied the doctrine of *res judicata* in holding that Petitioner's claim under the Ohio Constitution, having been decided under State law, could not therefore be relitigated in the Federal Judicial System.

The sole issue raised by Petitioner is whether the decision of the Sixth Circuit was consistent with the decision of this Court in *Communications Co., Inc.* v. *City of Boulder, supra.* It is readily apparent that the Court of Appeals faithfully applied *Boulder* as well as all other decisions of this Court on the State Action exemption to Federal Antitrust laws.

II. By authorizing the creation of regional transit authorities and granting those authorities extensive defined powers to provide public mass transit services, the Ohio legislature clearly articulated and affirmatively expressed the policy of the State of Ohio in an area of state wide concern: public transportation.

The General Assembly, Ohio's legislature, by valid statutory enactment and in pursuance of a statewide concern with public transportation, enacted a regional transportation act (§ 306.30 *et seq.* Ohio Revised Code). That Ohio statute sets forth with specificity the powers of regional transit authorities. Ohio regional transit authorities are established for all encompassing purposes of "acquiring, constructing, operating, maintaining, replacing, improving and extending transit facilities" (Ohio Revised Code, Section 306.31). Such regional authorities are empowered to extend their transit operations throughout and beyond their territorial boundaries, levy and collect taxes,

issue bonds, and acquire transit facilities owned by counties and municipal corporations. They are further empowered to purchase transit systems and franchises, enter into contracts for operation of existing transit facilities, secure grants or loans from the Government of the United States, exert the right of eminent domain, contract with other governmental entities and perform numerous other acts conforming with the basic purpose of providing unified and reliable transportation services throughout their territorial jurisdiction (Ohio Revised Code Section 306.35). The only pertinent limitation upon the described powers of Ohio Regional Transit Authorities is that such authorities may not appropriate the property of municipal corporations without the consent of the affected municipality (Ohio Revised Code 306.36 (B)).

It is the implementation by Respondent of these wide ranging powers which Petitioner opposed, first in the Courts of Ohio, and then, upon an antitrust theory, in this litigation.

III. The Ohio legislature contemplated that regional transit authorities would be the dominant providers of public transportation within their territorial jurisdictions.

The case at bar, however, is one in which the application of the state action exemption is clearly appropriate. Unlike the cities of Lafayette, Louisiana or Boulder, Colorado which provide a multiplicity of municipal services, respondent transit authority was created by the Ohio Legislature for one specific purpose: the provision of unified and dependable public transportation service throughout a clearly defined geographical area in a manner prescribed and authorized by Ohio statute.

All activities of the Respondent complained of below occurred as a consequence of Respondent's endeavor to

fulfill its statutory mission in accordance with requirements of Ohio law. It is particularly noteworthy that the Ohio courts in determining the duties and obligations of Respondent emphasized that Respondent was legally obligated to provide continuing transit service to its suburban ridership at then current levels of quality and frequency and that respondent was therefore required to implement and maintain the required degree of countywide service by any feasible method including purchase of suburban lines or the operation of parallel transit lines in competition with suburban transportation systems. In no case relied upon by Petitioner, and in no case decided by this Court, was there a comparably definitive exposition by State Courts concerning the statutory obligations of a state subdivision or the relationship between two governmental bodies providing service in competition with one another.

IV. Respondent's activities, pursuant to clearly articulated state policy, are immune from the operation of the antitrust laws of the United States.

Any rational discussion of the applicability of the state action exemption defense must, of course, focus on the decisions of this Court in *Lafayette* v. *Louisiana Power & Light Co.*, 435 U.S. 389 98 S. Ct. 1123 55 L. Ed. 2d 364 (1978) and *Community Communications Co., Inc.* v. *City of Boulder, supra,* which define the circumstances under which the state action exemption formulated in *Parker* v. *Brown,* 317 U.S. 341, 63 S. Ct. 307, 87 L. Ed. 315 (1943) is available to subdivisions of the state.

In *Lafayette* this Court concluded that a municipality or other political subdivision of a state is not exempt from the antitrust laws simply because of its governmental status, holding that the state action doctrine exempts only anticompetitive conduct engaged in by a subdivision pursuant

to articulated state policy to displace competition with regulation or monopoly services. The plurality opinion pointedly noted that the subdivision need not be able to point to a specific legislative authorization as a prerequisite to assertion at the state action defense. An adequate State mandate exists when it is found "from the authority given to a governmental entity . . . that the legislature contemplated the kind of action complained of." (435 U.S. Ct. 415).

The legislative grant of authority to Respondent clearly meets the Lafayette test. Petitioner's complaint alleged monopolization and an attempt to monopolize in claimed controvention of Section 2 of the Sherman Act. The Ohio Regional Transportation Act grants Respondent vast powers of operation, extension and acquisition from which it must be necessarily inferred that the Ohio Legislature contemplated that Respondent shall become principal purveyor of public transportation in Cuyahoga County, Ohio. To be sure, there is not written large in the Ohio Statute a mandate to Respondent that "thou shalt monopolize." It is equally true that the concept of consolidated regional transportation service, which is the very purpose of the Ohio Statute, contemplates market dominance in public transportation. We freely acknowledge that such dominance does exist, Respondent having been formed in 1975 about a nucleus of the two largest transit systems in its territorial jurisdiction: those formerly owned by the Cities of Cleveland and Shaker Heights. Indeed, even the ultimate acquisition of Petitioner's transit facilities was contemplated by both parties at the time they entered into the original subsidy contract.

Boulder arose from circumstances drastically different than those of this case. In *Boulder* the dispute arose between a private corporation and a home-rule municipality.

In this case the dispute is between two political subdivisions of the State of Ohio. In *Boulder* the position of the State of Colorado was one of total neutrality and there was no state legislative authorization for the actions of the city. In the instant case, the State of Ohio as an act of government has authorized the establishment of regional transit authorities, defined the territorial jurisdiction within which such authorities may operate, and delineated the rights, powers, and duties with the greatest of specificity in the Ohio statute. Unlike *Boulder* or any other antitrust case before this Court, the rights, duties and obligations between the parties litigant have been fully adjudicated by the State Courts, which concluded that Respondent acted at all times in accordance with its mandate from the Ohio legislature.

The situation in the case at bar contrasts starkly with that of *Boulder,* which involved a state governmental framework in which home-rule cities were free to formulate local policy in the absence of any reservation of power by the state. Such a vacuum of authority, this Court logically concluded, does not meet the test formulated in *Lafayette.* Thus this Court emphasized:

> "Under the plurality's standard, the Parker doctrine would shield from antitrust liability municipal conduct engaged in" pursuant to state policy to displace competition with regulation or monopoly public service. This was simply a recognition that a State may frequently choose to effect its policies through the instrumentality of its cities and towns. It was stressed, however, that the "state policy" relied upon would have to be "clearly articulated and affirmatively expressed."

Petitioner earnestly argues that the policy of Ohio like that of Colorado was one of total neutrality. That argument will not withstand scrutiny. The Ohio Legislature,

reacting to a judicially determined matter of statewide concern, authorized the establishment and operation of regional transit authorities. It granted to those authorities a wide range of powers to effect the governmental purpose of providing regional transportation service. Ohio therefore clearly addressed the issue of public transportation. By way of contrast Colorado simply delegated to its cities the responsibility for local government and did not address the issue which was the subject of the dispute in *Boulder*. The only policies involved in *Boulder* were those of the city, not of the State.

V. Any requirement of State supervision has been met in this case.

Significantly Petitioner does not argue that State supervision is either absent or required. This court in *Boulder* did not reach the question of whether the active state supervision test is applicable in cases involving a claim of anti-competitive conduct by state subdivisions (455 U.S. at 51, fn. 14). That test of course was the focal point of this Court's decision in *California Retail Liquor Dealers Ass'n.* v. *Midcal Aluminum Inc.* 455 U.S. 97, 100 S. Ct. 937, 63 L. Ed 2d 233 (1980). In *Midcal* it was determined that the State of California passively accepted, yet affirmatively enforced, prices set by private parties. This Court held that under such circumstances State supervision is an essential ingredient prerequisite to immunity from Sherman Act challenge, and denied immunity.[1] (455 U.S. at 106). The case at bar involves a far different situation.

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[1] We believe the better view to be that the requirement of supervision is legally and logically applicable only in cases such as Midcal in which state policy sanctions private anticompetitive activity. That issue is appropriate for decision in cases other than this.

Here, a statutorily created Board implements State policy in a manner sanctioned by the State's Courts. The element of State participation and supervision is therefore present.

The facts of this case bear close analogy to those of *New Motor Vehicle Bd. vs. Orrin W. Fox Co.*, 439 U.S. 96, 99 S. Ct. 403 58 L. Ed. 2d 361 (1978). In this case as in *New Motor Vehicle Board*, participation by a statutory board directly in the implementation of articulated state policy satisfies any requirement of supervision. See also such well-considered lower court decisions as *Euster* v. *Eagle Downs Racing Association*, 677 F.2d 992 (3d Cir. 1982), *cert. den.* 103 S. Ct. 388, and *Benson* v. *Arizona State Board of Dental Examiners*, 673 F.2d 272 (9th Cir. 1982) in which administration by statutorily created boards met the "active supervision" test.

Assuming *arguendo* that any further element of State supervision is necessary, under Ohio law all determinations of State Boards are subject to judicial review under Section 2506.01 *et seq.* of the Ohio Revised Code. Alternatively, any person interested in the construction of an Ohio statute may seek a judicial construction of the statute under Ohio's variant of the Uniform Declaratory Judgment Act as set forth in Ohio Revised Code Section 2721.03 and related sections. Indeed, the latter avenue was that pursued by both Petitioner and Respondent in the Ohio Courts prior to the commencement of the proceedings below.

VI. Petitioner's attempt to relitigate issues determined by the Courts of the State of Ohio is precluded by the doctrines of res judicata and collateral estoppel.

From 1979 through late 1981 Petitioner and Respondent engaged in litigation in the Courts of the State of Ohio concerning their respective obligations, one to the other, under Ohio law. As a consequence of that litigation, extensive findings of fact were issued and determinations were made about the applicability of certain provisions of the Ohio Constitution and the nature and extent of the powers granted to Respondent by the Ohio Regional Transportation Act (Section 306.30 *et seq.* Ohio Revised Code). The Ohio Courts found that Respondent had fulfilled all its contractual obligations to Petitioner and had not improperly attempted to coerce Petitioner to transfer its transit system to Respondent. Those Courts concluded that Respondent was required by Ohio law to conduct its transportation services throughout its territorial jurisdiction and had full authority under Ohio law to conduct those operations in competition with Petitioner, if necessary. It was held in Ohio that Article XVIII, Section 4 of the Ohio Constitution permitting Petitioner to provide utility services did not give Petitioner an exclusive franchise to provide public transportation within its own municipal boundaries or freedom from competition.

The Court below properly decided that Petitioner might not relitigate its pendant claim under the Ohio Constitution. That decision is so supported by universally accepted principles of res judicata that little further argument is required. In addition, it is obvious that many of the other claims which Petitioner attempts to raise in this case were conclusively determined by the Ohio Courts. Petitioner may not here contest findings of fact made in

Ohio or legal determinations issued by the Courts of that State. The traditional adherence of the federal courts to the doctrines of res judicata and collateral estoppel has been stated by this Court on numerous occasions. Thus in the case of *Montana* v. *United States,* 440 U.S. 147, 99 S. Ct. 970, 59 L. Ed. 2d 210, (1979), this Court in determining that a Constitutional issue raised by the government of the United States was preclusively barred because of prior State Court litigation pointed out:

> "A fundamental precept of common-law adjudication, embodied in the related doctrines of collateral estoppel and res judicata, is that a 'right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction . . . cannot be disputed in a subsequent suit between the same parties or their privies . . . .' . . . . Under res judicata, a final judgment on the merits bars further claims by parties or their privies based on the same cause of action . . . . Under collateral estoppel, once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation . . . . Application of both doctrines is central to the purpose for which civil courts have been established, the conclusive resolution of disputes within their jurisdictions . . . . To preclude parties from contesting matters that they have had a full and fair opportunity to litigate protects their adversaries from the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions." (440 U.S. at 153-154)

In the same vein are *Allen* v. *McCurry*, 449 U.S. 90, 101 S. Ct. 441, 66 L. Ed. 2d 308 (1980); *Parklane Hosiery Co.* v. *Shore*, 439 U.S. 322, 99 S. Ct. 645, 58 L. Ed. 2d 552 (1978); *Lawlor* v. *National Screen Service Corp.*, 349 U.S. 322, 75 S. Ct. 865, 99 L. Ed. 1122 (1955).

In sum, Petitioner's pendant claim under the Ohio Constitution is barred by res judicata. Its contentions with respect to alleged coercion by Respondent and arguments concerning the interpretation to be accorded to the applicable provisions of Ohio law are precluded by collateral estoppel.

CONCLUSION

Petitioner has failed to raise any issue which warrants the scrutiny of this Court. Most assuredly, this Petitioner should not be permitted to utilize the federal antitrust laws to circumvent the public policy of Ohio and decisions issued by the Courts of that State with respect to regional transportation authorities. Significantly, Petitioner has not alleged any act by the Respondent Transit Authority which is either inconsistent with or contrary to Ohio statutes authorizing the creation and operation of such authorities.

This case has been fully litigated before, albeit upon a different legal theory. Petitioner attempts to contest matters which it had a full and fair opportunity to litigate in the State Courts. Respondent should be protected from the expense and vexation of further litigation of this state lawsuit. The valuable resources of this Court should be

reserved for weightier matters. The Writ must therefore be denied.

Respectfully submitted,

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APPENDIX

SECTION 306.31

OHIO REVISED CODE

306.31 Creation of authority

A regional transit authority may be created in the manner provided in section 306.32 of the Revised Code, for any one or more of the following purposes: acquiring, constructing, operating, maintaining, replacing, improving, and extending transit facilities; controlling and administering the public utilities franchise of such transit facilities; entering into and supervising franchise agreements; accepting assignment of and then supervising an existing franchise agreement; and accepting assignment of and exercising a right to purchase a transit system in accordance with the acquisition terms of an existing franchise agreement. A regional transit authority so created is a political subdivision of the state and a body corporate with all the powers of a corporation, comprised of the territory of one, or two or more counties, municipal corporations, townships, or any combination thereof, provided, that each county, municipal corporation, or township included within a regional transit authority shall be a county which is, or be located in a county which is or is contiguous to a county which is, or in which a municipal corporation or township is located which is, included in such regional transit authority.

SECTION 306.35
OHIO REVISED CODE

306.35 Powers and duties

Upon the creation of a regional transit authority as provided by section 306.32 of the Revised Code, and upon the qualifying of its board of trustees and the election of a president and a vice-president, the authority shall exercise in its own name all the rights, powers, and duties vested in and conferred upon it by sections 306.30 to 306.53 of the Revised Code. Subject to such reservations, limitations, and qualifications as are set forth therein, the regional transit authority:

(A) May sue or be sued in its corporate name;

(B) May make contracts in the exercise of the rights, powers, and duties conferred upon it;

(C) May adopt and at will alter a seal and use such seal by causing it to be impressed, affixed, reproduced, or otherwise used, but failure to affix the seal shall not affect the validity of any instrument;

(D) May adopt, amend, and repeal bylaws for the administration and operation of transit facilities under its jurisdiction, and for the exercise of all of its rights of ownership therein;

(E) May fix, alter, and collect fares, rates, and rentals and other charges for the use of transit facilities under its jurisdiction to be determined exclusively by it for the purpose of providing for the payment of the expenses of the regional transit authority, the acquisition, construction, improvement, extension, repair, maintenance, and operation of transit facilities under its jurisdiction, the payment of principal and interest on its obligations, and to

fulfill the terms of any agreements made with purchasers of holders of any such obligations, or with any person or political subdivision;

(F) Shall have jurisdiction, control, possession, and supervision of all property, rights, easements, licenses, moneys, contracts, accounts, liens, books, records, maps, or other property rights and interests conveyed, delivered, transferred, or assigned to it;

(G) May acquire, construct, improve, extend, repair, lease, operate, maintain, or manage transit facilities within or without its territorial boundaries, considered necessary to accomplish the purposes of its organization and make charges for the use of transit facilities;

(H) May levy and collect taxes as provided in sections 306.40 and 306.49 of the Revised Code;

(I) May issue bonds secured by its general credit as provided in section 306.40 of the Revised Code;

(J) May hold, encumber, control, acquire by donation, purchase, or condemnation, construct, own, lease as lessee or lessor, use, and sell real and personal property, or any interest or right therein, within or without its territorial boundaries, for the location or protection of transit facilities and improvements and access thereto, the relocation of buildings, structures, and improvements situated on lands acquired by the regional transit authority, or for any other necessary purpose, or for obtaining or storing materials to be used in constructing, maintaining, and improving transit facilities under its jurisdiction;

(K) May exercise the power of eminent domain to acquire property or any interest therein, within or without its territorial boundaries, which is necessary or proper for the construction or efficient operation of any transit fa-

cility or access there to under its jurisdiction in accordance with section 306.36 of the Revised Code;

(L) May provide by agreement with any county, including the counties within its territorial boundaries, or any municipal corporation or any combination thereof for the making of necessary surveys, appraisals, and examinations preliminary to the acquisition or construction of any transit facility and the amount of the expense thereof to be paid by each such county or municipal corporation;

(M) May provide by agreement with any county, including the counties within its territorial boundaries, or any municipal corporation or any combination thereof for the acquisition, construction, improvement, extension, maintenance, or operation of any transit facility owned or to be owned and operated by it or owned or to be owned and operated by any such country or municipal corporation and the terms on which it shall be acquired, leased, constructed, maintained, or operated, and the amount of the cost and expense thereof to be paid by each such county or municipal corporation;

(N) May issue revenue bonds for the purpose of acquiring, replacing, improving, extending, enlarging, or constructing any facility or permanent improvement which it is authorized to acquire, replace, improve, extend, enlarge, or construct, including all costs in connection with and incidental to such acquisition, replacement, improvement, extension, enlargement, or construction, and the financing thereof, as provided by section 306.37 of the Revised Code;

(O) May enter into and supervise franchise agreements for the operation of a transit system;

(P) May accept the assignment of and then supervise

an existing franchise agreement for the operation of a transit system;

(Q) May exercise a right to purchase a transit system in accordance with the acquisition terms of an existing franchise agreement; and in connection with such purchase the regional transit authority may issue revenue bonds as provided by section 306.37 of the Revised Code or issue bonds secured by its general credit as provided in section 306.40 of the Revised Code;

(R) May apply for and accept grants or loans from the United States, the state, or other public body for the purpose of providing for the development or improvement of transit facilities, mass transportation facilities, equipment, techniques, methods, or services, and grants or loans needed to exercise a right to purchase a transit system pursuant to agreement with the owner of such transit facilities, or for providing lawful financial assistance to existing transit systems; and may provide any consideration which may be required in order to obtain such grants or loans from the United States, the state, or other public body, either of which grants or loans may be evidenced by the issuance of revenue bonds as provided by section 306.37 of the Revised Code or general obligation bonds as provided by section 306.40 of the Revised Code;

(S) May employ and fix the compensation of consulting engineers, superintendents, managers, and such other engineering, construction, accounting and financial experts, attorneys, and other employees and agents necessary for the accomplishment of its purposes;

(T) May procure insurance against loss to it by reason of damages to its properties resulting from fire, theft, accident, or other casualties or by reason of its liability for any damages to persons or property occurring in the con-

struction or operation of transit facilities under its jurisdiction or the conduct of its activities;

(U) May maintain such funds as it considers necessary for the efficient performance of its duties;

(V) May direct its agents or employees, when properly identified in writing, after at least five days' written notice, to enter upon lands within or without its territorial boundaries in order to make surveys and examinations preliminary to the location and construction of transit facilities, without liability to it or its agents or employees except for actual damage done;

(W) May, on its own motion, request the appropriate zoning board, as defined in section 4563.03 of the Revised Code, to establish and enforce zoning regulations pertaining to any transit facility under its jurisdiction in the manner prescribed by sections 4563.01 to 4563.21 of the Revised Code;

(X) Shall, if it acquires any existing transit system, assume all the employer's obligations under any existing labor contract between the employees and management of the system. The board shall, if it acquires, constructs, controls, or operates any such facilities, negotiate arrangements to protect the interests of employees affected by such acquisition, construction, control, or operation. Such arrangements shall include, but are not limited to:

(1) The preservation of rights, privileges, and benefits under existing collective bargaining agreements or otherwise, the preservation of rights and benefits under any existing pension plans covering prior service, and continued participation in social security in addition to participation in the public employees retirement system as required in Chapter 145. of the Revised Code;

(2) The continuation of collective bargaining rights;

(3) The protection of individual employees against a worsening of their positions with respect to their employment;

(4) Assurances of employment to employees of such transit systems and priority reemployment of employees terminated or laid off;

(5) Paid training or retraining programs;

(6) Signed written labor agreements.

Such arrangements may include provisions for the submission of labor disputes to final and binding arbitration.

(Y) May provide for an maintain such security operations as are necessary for the protection of persons and property under its jurisdiction and control. Such employees as the board of trustees of a regional transit authority employs for that purpose are vested with the same powers of arrest as police officers under section 2935.03 of the Revised Code in protecting the property of the regional transit authority and the person and property of passengers. Before exercising such powers, each employee shall take an oath and give bond to the state in such sum that the board prescribes for the proper performance of his duties.

Such employees shall be required to complete training for the position to which they have been appointed as required by the Ohio peace officer training council as authorized in section 109.78 of the Revised Code, or be otherwise qualified. The cost of such training shall be provided by the regional transit authority.

(Z) May procure a policy or policies insuring members of its board of trustees against liability on account of

damages or injury to persons ond property resulting from any act or omission of a member in his official capacity as a member of the board or resulting solely out of his membership thereon.

(AA) May enter into any agreement for the sale and leaseback of qualified mass commuting vehicles for federal income tax purposes under section 168 (F) (8) of the Internal Revenue Code of 1954, as amended, which agreement may contain all necessary covenants for the security and protection of any lessor or the regional transit authority including, but not limited to, indemnification of the lessor against the loss of anticipated tax benefits arising from acts, omissions, or misrepresentations of the regional transit authority. In connection with any such transaction, the regional transit authority may contract for insurance and letters of credit and pay any premiums or other charges therefor. The fiscal officer shall not be required to furnish any certificate under section 5705.41 of the Revised Code in connection with the execution of any such agreement.

SECTION 306.36
OHIO REVISED CODE

306.36 Appropriation of property; payment in lieu of taxes

(A) The board of trustees of a regional transit authority may exercise the power of emnient domain to appropriate any land, rights, rights-of-way, franchise, power lines, easements, or other property, within or without the territorial boundaries of the regional transit authority, necessary or proper for the construction or efficient operation of any transit facility or access thereto under

its jurisdiction pursuant to the procedure provided in sections 163.01 to 163.22, inclusive, of the Revised Code, and subject to division (B) of this section, provided that a regional transit authority shall not proceed to so appropriate real property outside its territorial boundaries, until it has served at the office of the county commissioners of the county in which it is proposed to appropriate real property, a notice describing the real property to be taken and the purpose for which it is proposed to be taken, and such county commissioners have entered on their journal within thirty days after such service a resolution approving such appropriation.

(B) Nothing contained in sections 306.30 to 306.53, inclusive, of the Revised Code authorizes a regional transit authority to appropriate any land, rights, rights-of-way, franchises, or easements belonging to the state or a municipal corporation without the consent of the state or municipal corporation, and no regional transit authority shall exercise the right of eminent domain to acquire any certificate of public convenience and necessity, or any part thereof, issued to a motor transportation company by the public utilities commission of Ohio or by the interstate commerce commission of the United States, or to take or disturb other property or facilities belonging to any political subdivision, public corporation, public utility, or common carrier, which property or facility is necessary and convenient in the operation of such political subdivision, public corporation, public utility, or common carrier, unless provision is made for the restoration, relocation, or duplication of such property or facility, or upon the election of such political subdivision, public corporation, public utility, or common carrier, for the payment of compensation, if any, at the sole cost of the regional transit authority, provided:

(1) If any restoration or duplication of any property or facility proposed to be made under this division involves a relocation of such property or facility the new facility and location thereof shall be of at least comparable utilitarian value and effectiveness and such relocation shall not impair the ability of the public utility or common carrier to compete in its original area of operation.

(2) If any restoration or duplication of any property or facility proposed to be made under this division involves a relocation of such property or facility, the regional transit authority shall acquire no interest or right in or to the appropriated property or facility until the relocated property or facility is available for use and until marketable title thereto has been transferred to the public utility or common carrier.

(C) When real property is acquired which is located outside the territorial boundaries of th regional transit authority and which is removed from the tax duplicate, the regional transit authority shall pay annually to the county treasurer of the county in which such property is located, commencing with the first tax year in which such property is removed from the tax duplicate, an amount of money in lieu of taxes equal to the smaller of the following:

(1) The last annual installment of taxes due from the acquired property before removal from the tax duplicate;

(2) An amount equal to the difference between the combined revenue from real estate taxes of all the taxing districts in which such property is located in the tax year immediately prior to the removal of such acquired property from the tax duplicate, and either:

(a) The total revenue which would be produced by

the tax rate of each such taxing district in the tax year immediately prior to the removal of such acquired property from the tax duplicate, applied to the real estate tax duplicate of each of such taxing districts in each tax year subsequent to the year of removal; or

(b) The combined revenue from real estate taxes of all such taxing districts in each tax year subsequent to the year of removal, whichever is the greater.

The county auditor of each county in which such property is located shall apportion each such annual payment to each taxing district as if such annual payment has been levied and collected as a tax.

Such annual payments shall never again be made after they have ceased.

The regional transit authority may be exempted from such payment by agreement of the affected taxing district or districts in the county in which such property is located.

SECTION 2506
OHIO REVISED CODE

2506.01 Appeal from decisions of any agency of any political subdivision

Every final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, commission, department or other division of any political subdivision of the state may be reviewed by the common pleas court of the county in which the principal office of the political subdivision is located, as provided in sections 2505.01 to 2505.45, inclusive, of the Revised Code, and as such

procedure is modified by sections 2506.01 to 2506.04, inclusive, of the Revised Code.

The appeal provided in sections 2506.01 to 2506.04, inclusive, of the Revised Code is in addition to any other remedy of appeal provided by law.

A "final order, adjudication, or decision" does not include any order from which an appeal is granted by rule, ordinance, or statute to a higher administrative authority and a right to a hearing on such appeal is provided; any order which does not constitute a determination of the rights, duties, privileges, benefits, or legal relationships of a specified person; nor any order issued preliminary to or as a result of a criminal proceeding.

SECTION 2721.03
OHIO REVISED CODE

2721.03 Construction and validity of instrument

Any person interested under a deed, will, written contract, or other writing constituting a contract, or whose rights, status, or other legal relations are affected by a constitutional provision, statute, rule as defined in section 119.01 of the Revised Code, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under such instrument, constitutional provision, statute, rule, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.

The testator of a will may have the validity of the will determined at any time during his lifetime pursuant to sections 2107.081 to 2107.085 of the Revised Code.

ARTICLE XVIII, SECTION 4, OHIO CONSTITUTION

XVIII § 4 Public utilities; acquisition

Any municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public utility the products or service of which is or is to be supplied to the municipality or its inhabitants, and may contract with others for any such product or service. The acquisition of any such public utility may be by condemnation or otherwise, and a municipality may acquire thereby the use of, or full title to, the property and franchise of any company or person supplying to the municipality or its inhabitants the service or produce of any such utility.